4481

SUPREME COURT OF THE UNITED STATES.

No. 158.

RICHARD NUGENT, ASSIGNEE OF ELIZABETH NORTON, IN BANKRUPTCY, PLAINTIFF IN ERROR,

vs.

GEORGE W. BOYD, ISAAC T. PRESTON, AND ABNER PHELPS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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J. & G. S. GIDEON, Printers.

Be it remembered that, on the 2d day of January, 1844, the complainants, Richard Nugent, assignee of Elizabeth Norton, in bankruptcy, came into court by L. C. Hornsby, their solicitor, and filed the bill in equity, to wit:

To the honorable the circuit court of the United States for the —— circuit, holding sessions in the eastern district of Louisiana, sitting in chancery.

The bill of complaint of Richard Nugent, assignee of the estate of Elizabeth Norton, in bankruptcy, and residing in the city of New Orleans, humbly shows:

That, on or about the ninth day of May, eighteen hundred and forty-two, *that* said Elizabeth Norton filed her petition in the district court of the United States for the eastern district of Louisiana, sitting in bankruptcy, praying to be decreed a bankrupt; that after due proceeding in said court, and on or about the first day of June, eighteen hundred and forty-two, a decree of bankruptcy was duly rendered on her said petition, and your complainant was thereupon appointed and qualified as the assignee of the estate of the said bankrupt.

That in the schedule of said bankrupt, filed with her said petition, two certain lots of ground, in the parish of Jefferson, were included under the description of a house and lot in the Nuns' Suburb, city of La Fayette, being numbered "*seven*," in square number "*ten*," on the original plan of said Faubourg, having a front of forty feet on Religious street, by one hundred and twenty, in French measure, in depth, and therein valued at the sum of five thousand dollars; and one other lot, adjoining the above, being numbered "*six*," in the same square, having thirty-two feet in front on said Religious street, by a like depth with lot number "*seven*," valued at twenty-five hundred dollars. And that, in said schedule, the name of George William Boyd is inserted, among others, as a creditor of said bankrupt, for the sum of nine thousand dollars, and that due and legal notice were served upon said Boyd of the said proceedings in bankruptcy; all of which will appear by reference to the transcript of said proceedings here annexed, marked exhibit A, and prayed to be taken as part of this bill of complaint.

And your complainant further shows that, prior to and at the time of said bankruptcy of said Elizabeth Norton, the said property was affected by a special mortgage, valid by the laws of Louisiana, and duly recorded in the proper offices of said parish of Jefferson, in favor of the said George W. Boyd, a resident of New Orleans aforesaid, for a large sum of money, to wit, the said sum of nine thousand dollars and upwards. That prior to the said bankruptcy, to wit, on or about the eleventh day of November, eighteen hun-

dred and forty-one, the said George W. Boyd commenced suit upon his said mortgage in the district court of the first judicial district of Louisiana, then having jurisdiction in the premises, and recovered a judgment therein, with the privileges of a mortgage as aforesaid; that execution issued thereon in due course of law, which, on or about the sixteenth day of February, eighteen hundred and forty-two, was levied upon the said property; and such proceedings were thereupon had, in conformity with the laws and usages of Louisiana, that, on or about the fourth day of June, eighteen hundred and forty-two, the said property was, by the sheriff of the —— Jefferson aforesaid, adjudicated and sold to one Isaac T. Preston and one Abner Phelps, who then and there, under said adjudication, took possession of said property, and still possess the same, claiming to be the owners thereof; all of which, together with a more full and *and* particular description of said property, will appear by the transcript of the proceedings in said district court, and by the return upon said execution, which are here annexed, marked exhibit "B," and prayed to be taken as part of this bill of complaint.

And your orator further shows that, in pursuance of the act of Congress, in such cases made and provided, the said district court of the United States, for the eastern district of Louisiana, sitting in bankruptcy, has adopted certain rules for the disposition of real estate surrendered by bankrupts, and affected as incumbered by mortgages, which rules were in force during all the time embraced by *by* the aforesaid proceedings, and of which rules a copy is here annexed, marked exhibit "C," and prayed to be taken as part hereof. That your petitioner having received such notice of said levy and intended sale, as is usually given under the laws of Louisiana to defendants in execution, duly notified before said sale the said plaintiff, George W. Boyd, and the said purchasers, Isaac T. Preston and Abner Philps, and the sheriff of the said parish of Jefferson, severally and respectively, in writing, of said bankruptcy, and of your orator's appointment as assignee as aforesaid, and cautioned said parties not to proceed with said intended sale; but the aforesaid parties, notwithstanding the premises, and disregarding the said notice and caution, contriving and subtly intending to defeat the just rights of your orator as assignee as aforesaid, and against the law and rules of court aforesaid, did, nevertheless, proceed to sell and adjudicate the said property, and to place the said purchasers in possession as herein before stated and set forth.

Now your orator further humbly represents that, by virtue of the said bankrupt act of the United States, all judicial proceedings against the property of said bankrupt, Elizabeth Norton, under the authority of the laws and courts, and by the officers of the State of Louisiana, were and ought to have been stayed, suspended and superseded from the moment of the filing of the petition of said defendant in the said court to be decreed a bankrupt. That all the aforesaid subsequent proceedings, under the State laws, were ir-

regular, and conferred no title on said purchasers. That your orator was, as assignee as aforesaid, and by virtue of the said law, and the rules of court made in conformity therewith, entitled to take the said property from the hands of the aforesaid sheriff holding the same under execution, and to administer and sell the same under the direction and authority of the said district court of the United States sitting in bankruptcy. That the said George W. Boyd, a creditor of said insolvent, was duly notified of the proceedings in bankruptcy, and by such notice became a party thereto; and that he was bound in law to stay the proceedings under the State law, and to submit himself to the rules and orders of the said court in bankruptcy, and especially to the rules here annexed and referred to.

To the end, therefore, that full and perfect justice may be done in the premises, and your petitioner having no relief at law, may it please the court to grant the process of subpœna, directed to the said George W. Boyd, and to the said Isaac T. Preston and Abner Phelps, all residing within the jurisdiction of the honorable court, requiring them to appear and answer this bill of complaint; that, after due proceedings in the premises, it be ordered, decreed and adjudged that all and singular the proceedings, under the aforesaid writ of fieri facias, issued as aforesaid from the said district court of the State of Louisiana, and which occurred subsequent to the date aforesaid of the filing of said petition of Elizabeth Norton praying a decree in bankruptcy, were irregular and informal; that the title of said Isaac T. Preston and Abner Phelps, from the said sheriff selling under said execution, be decreed to be null and invalid; that the said Preston and Philps be ordered to restore to your complainant, as assignee as aforesaid, the possession of said real estate to be by him administered and sold in conformity with the orders and directions of the said district court of the United States sitting in bankruptcy, and in pursuance of the rules hereto above annexed and referred to, that the said George W. Boyd be decreed and directed to come into the said district court sitting in bankruptcy, and to conform himself, as a mortgagee and creditor as aforesaid, to the orders of said court, and the requirements of said rules; and that all such further relief may be granted in the premises as equity and the nature of the case require and demand.

And, as in duty bound, your orator will ever pray, &c.

Signed, L. C. HORNSBY, *Att'y.*

Endorsed: Service accepted.

Signed, ISAAC T. PRESTON, *for Defts.*

Exhibit "A."

UNITED STATES OF AMERICA.—In bankruptcy.

Petition by debtor for benefit of the act of Congress to the honorable the judge of the United States district court of Louisiana, respectfully represents:

That she is separate in property, and resides in the parish of

Jefferson, and State of Louisiana, that she is owing debts in her private right and capacity to sundry creditors, a list of whose names and places of residence, and the amount due to each, according to the best of her knowledge and belief, is contained in the schedule hereto annexed, marked "A;" and the annexed schedule marked B, contains an accurate inventory of property, right, and credits of every named kind and description, and of the location and situation of each and every parcel and portion thereof; that she is unable to meet her debts and engagements, and she therefore applies to this honorable court for the benefit of the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," and prays that, after due proceedings had, she may be declared by a decree of the court to be bankrupt within the purview of the said act, and upon her compliance with all the requisitions of said act, and all the orders and directions of the court in the premises, that she may be decreed to have a certificate of discharge from all her debts proveable under the said act, and otherwise entitled to all the benefits thereof.

Signed by the petitioner, on the 9th day of May, A. D. 1842.

(Signed) ELIZABETH NORTON.

Sworn to and subscribed before me—

(Signed) W. J. VASON,
Commissioner of the said Court, &c.

Order of the court thereon.

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

On this ninth day of May, A. D. 1842, upon reading the foregoing petition, it is ordered by the court, that notice thereof be published in a newspaper, printed in the district at least twenty days before the first day of June, when a hearing will be had on the said petition, at this court room, within the said district, at 9 o'clock in the forenoon, so that persons interested may appear at the said time and place, and show cause, if any they have, why the prayer of the said petition should not be granted.

(Signed) ED. LARUE,
Deputy Clerk of the Court.

"B."

Inventory of property.

1 house and lot in Nun's Suburb, city of Lafayette, No. 7, in sqr. 10, having forty feet, French measure, in front on Religious street, by one hundred and twenty in depth, of the value of - - - -	$10,000
1 other lot, joining the above, 30 feet front, by the same depth, No. 6, in same square - - -	2,500
1 square of ground in Bloomingdale, No. 31 - -	3,600

1 negro man, slave, Dangerfield - - -	1,500
1 do do Owen - - - -	1,000
1 woman, do children - - - -	1,20(
Household furniture - - - - -	1,00
1 barouche - - - - - -	15(
	$19,15(

(Signed) ELIZABETH NORTON.

"A."

A schedule setting forth a list of petitioner's creditors, their resi dence, and the amount due each.

George William Boyd, heir of Susan Boyd, who resides in the State of New York - - - - -	$9,00
John Green, of the parish of Jefferson, by two notes—	
1st - - - - - - - -	84(
2d - - - - - - - -	34(
C. Godchall, by notes, he resides in New Orleans—	
1st - - - - - - - -	84(
2d - - - - - - - -	16:
Elisha Crocker, who resides in the parish of Jefferson, by two notes, $14 each - - - -	2(
George A. Waggaman, who resides in the parish of Jefferson, by note, with interest - - -	1,000
Alexander Rantull, by judgment, interest, and costs, he resides in N. Orleans - - - - -	1,000
George W. Boyd, of New York, by judgment, interest, and costs - - - - - -	1,172
George Nelson, resides in Kentucky, Green county, note and interest - - - - - -	500
C. F. Hosey, of New Orleans, note - - -	334
Mrs. Leach, parish of Jefferson, by account - -	40

(Signed) ELIZABETH NORTON.

Decree of bankruptcy.

June 1st, A. D. 1842.

On this day appeared the petitioner, by her counsel, who, showing to the court, that all the formalities required by law and the rules of court have been complied with—that publication of notice has been duly made, and proof thereof given, and that no opposition to the petition has been filed, moved that a decree of bankruptcy be entered up: Wherefore it is ordered by the court, that Mrs. Elizabeth Norton be, and she is hereby, declared a bankrupt. It is further ordered, that Richard Nugent, of the city of New Orleans, be, and he is hereby, appointed assignee of the estate of the said bankrupt, and that he be required to give security in a bond to the United States in the sum of five thousand dollars.

It is further ordered, that the clerk certify a copy of these orders and decrees, and deliver them to the said assignee.

CLERK'S OFFICE, NEW ORLEANS,
United States Dist. Court, Eastern Dist. of Louisiana.

A true copy from the original, on file and of record in this court.
[SEAL.] Witness my hand and the seal of the court, this 9th day of December, A. D. 1843.
(Signed) N. R. JENNINGS, *Clerk.*

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana:

Sitting in bankruptcy, June 1, 1842. Present, the honorable Theo. H. McCaleb, judge.

In the matter of the petition of Elizabeth Norton, to be declared a bankrupt.—No. 203.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Mrs. Elizabeth Norton, wife of Harvey Norton, of the parish of Jefferson, be, and she is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered, that Richard Nugent, of the city of New Orleans, be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said Richard Nugent give security, in a bond to the United States, with two sufficient sureties to be approved by the court, in the sum of five thousand dollars, conditioned for the due and faithful discharge of all his duties, as such assignee, and his compliance with the orders and directions of the court.

And it is further ordered, that the clerk do certify and cause to be delivered this order to the said assignee.

CLERK'S OFFICE, *December 9th*, 1843.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were made by the court, and duly entered on the docket of bankrupt proceedings, on the day and date above mentioned, to wit, June 1st, A. D. 1843.

(Signed) N. R. JENNINGS,
Clerk of the United States District Court,
Eastern District of Louisiana.

To R. NUGENT, Assignee.

Exhibit "B."

STATE OF LOUISIANA, *First Judicial District Court:*

GEORGE W. BOYD
vs.
ELIZABETH DALTON, wife of Harvey Norton. } No. 20,637.

Petition filed 11th November, 1841.

To the honorable the district court for the first judicial district of Louisiana:

The petition of George ——, who resides in the city of New Orleans, respectfully shows, that Elizabeth Dalton, wife of Harvey Norton, who resides in the parish of Jefferson, is justly indebted to petitioner in the sum of eleven hundred and sixty-two dollars, with interest at the rate of five per cent. a year, from the 17th March, 1838; that petitioner is owner and holder, by virtue of succeeding to the estate of Susan G. Boyd, deceased, of a certain promissory note, drawn at New Orleans, on the 13th March, 1837, by said Elizabeth Dalton, duly authorized thereto by her said husband, from whom she is separate in property, for the said sum of eleven hundred and sixty-two dollars, payable to the order of Susan G. Boyd, one year after date, which said note was not paid at maturity, and has not been paid since, though often demanded, all which will more fully appear by the said note hereto annexed. Petitioner shows that the said note was given for part of the price of property, producing an income, and that it draws interest from maturity. Petitioner further shows, that to secure the punctual payment of the said note, among others, the following described property, sold by the said Susan G. Boyd to the said Elizabeth Dalton, was, by the latter unto the former, specially mortgaged and hypothecated, to wit, the following described lots of ground, together with all the buildings and improvements thereon, rights and privileges, customs, servitudes, and appurtenances thereto belonging, or in anywise appertaining, situate in the parish of Jefferson, in this State, to wit, one lot situate in the Nuns' Faubourg, and designated by the number seven, in square number "ten," on a plan drawn by Joseph Pilie, on the twenty-third day of May, eighteen hundred and twenty-nine, and deposited in the office of Theodore Seghus, a notary public in this city, on the ninth day of June, eighteen hundred and twenty-nine. The said lot measured forty feet front on Religious street, by one hundred and twenty feet in depth, between parallel lines, French measure, bounded on one side by lot number six, and on the other side by lot number eight, and in the rear by Jean Mornai. *Second*, a lot of ground, also situated in the Nuns' Faubourg, designated by the number six, on a plan drawn by John Schueber, bearing date the fifth December, eighteen hundred and thirty-six, and deposited in the office of Theodore Seghus, notary in this city, for reference in the book of

plans, as plan numbered twenty-six; said lot is situated in the square bounded by Nuns' street, Religious street, St. Mary's road, and Levee street, and measures thirty feet front on said Religious street, by one hundred and twenty-seven feet ten inches and five lines in depth, between parallel lines, America measures; all of which more fully appear by [a] public act, passed before William Christy, notary public, on the 13th day of March, 1837, an authentic copy of which [is] annexed.

Wherefore, petitioner prays that the said Elizabeth Dalton, wife of Harvey Norton, and her said husband, may be cited to appear and answer this petition, and that after due proceedings, petitioner may have judgment —— her, for the amount so due him, with interest as aforesaid, and five dollars, costs of copy of national act and costs of suit; and that he may be further decreed to have privilege of vender on the above described property, for the payment of the same, and for all further general and equitable relief. As in duty bound, &c.

(Signed) JOHN C. LARUE, *for Pet'r.*

Note annexed to Petition.

$1,162. NEW ORLEANS, 13*th March*, 1837.

One year after date I promise to pay to the order of Mrs. Susan G. Boyd eleven hundred and sixty-two dollars and no cents, for value received.

(Signed) ELIZABETH NORTON.
Authorized: (Signed) HARVEY NORTON.

Ne varietur, 13 March, 1837.

WM. CHRISTY, *Not. Pub.*

Copy of act annexed to Petition.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day, before me, William Christy, a notary public, and for the said city and parish of New Orleans duly commissioned and qualified, personally came and appeared Mistress Susan Green Martin, widow of William Boyd, late of this city, deceased, who declared, that for the consideration hereinafter expressed, she does by these presents grant, bargain, sell, convey, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, except the special mortgages hereinafter set forth and assumed, unto Mistress Elizabeth Dalton, wife of Harvey Norton, of this city, separated in property from her said husband, and by him duly assisted and authorized to the *exception* of these presents, she being present, *excepting* and purchasing for herself, her heirs, and assigns, and acknowledging delivery and possession thereof, "the following described lots of grounds, to-

gether with all the buildings and improvements thereon, rights, privileges, customs, servitudes, and appurtenances thereto belonging, or in anywise appertaining, situate in the parish of Jefferson, in this State, to wit: one lot situate in the Nun's Faubourg, and designated by the number "seven," in square number "ten," on a plan drawn by Joseph Pilie, on the twenty-third day of May, eighteen hundred and twenty-nine, and deposited in the office of Theodore Segher, a notary public in this city, on the ninth day of June, eighteen hundred and twenty-nine. The said lot measures forty feet front on Religious street by one hundred and twenty feet in depth, between parallel lines, French measures; bounded on one side by lot number six, and on the other side by lot number eight, and in the rear by Jean Moruai. The said lot was purchased by the present vendor from William Lewis Slaughter, by an act passed in this office *office*, on the fourteenth day of March, eighteen hundred and thirty-six, and is free from incumbrance, as appears from the annexed certificate of the recorder of mortgages for the said parish of Jefferson, dated this day, with the exception of the mortgage granted by the said Mrs. Boyd in favor of her said vendor, by a clause in her said act of purchase, to secure the payment of two promissory notes drawn by her to the order of, and endorsed by, George W. Boyd, dated the fourteenth March, eighteen hundred and thirty-six, and made payable, one for the sum of seven hundred and fifty dollars in one year, and the other for the sum of one thousand dollars in two years, after date, and the assumption taken by the said Mrs. Boyd, in her said act of purchase, to pay the sum of one thousand dollars on the seventeenth day of November, eighteen hundred and fifty-one, with interest thereon at the rate of six per cent. per annum, payable in advance, as expressed in the said act.

Second. A lot of ground also situate in the Nun's Faubourg, designated by the number six on a plan drawn by John Schruber, bearing date the fifth December, eighteen hundred and thirty-six, and deposited in the office of Theodore Seghus, notary in this city, for reference in the book of plans, as plan numbered twenty-six; said lot is situated in the square bounded by Nun's street, Religious street, St. Mary's road, and Levee street, and measures thirty feet front on said Religious street, by one hundred and twenty-seven feet, ten inches and five lines in depth, between parallel lines, American measure,") and was purchased by the present vendor from Charles G. Walk, of Mississippi, acting as the agent and attorney in fact of Jesse Walker, on the seventeenth day of December, eighteen hundred and thirty-six, by an act passed before the said Theodore Seghers, notary; which said lot of ground is free from incumbrance, as appears from the annexed certificate of the recorder of mortgages, with the exception of the mortgage granted by the said Mrs. Boyd in favor of the said Walker, her vendor, by a clause in her said act of purchase, to secure the payment of her

two promissory notes for the sum of five hundred and seventy-five dollars, each drawn to the order of, and endorsed by, George W. Boyd, dated on the eighth day of December, eighteen hundred and thirty-six, and made payable in six and twelve months after date; all which mortgages are hereby assumed by the said Mrs. Norton, who places herself in lieu of the said Mrs. Boyd in relation thereto: to have and to hold the said described two lots of ground, rights, privileges, and appurtenances, &c., unto the said purchaser, his heirs and assigns, to their own proper use and behoof forever. And the said vendor, of herself and her heirs, the above described two lots of ground, rights, privileges, appurtenances, and to the said purchaser, her heirs and assigns, shall and will warrant, and forever defend, against the lawful claims of all and every person and persons, whom or whatsoever, by these presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which she herself has, or may have, against her own vendors, or against the vendors of her vendors, hereby fully authorizing the said purchaser to exercise the said rights and actions in the same manner and to the same extent as she herself might or could have done.

This sale is made for and in consideration of the sum of thirteen thousand and sixty-two dollars, and interest, as hereinafter mentioned, seven hundred and forty dollars of which have been paid in ready money, say - - - - - - $750

In part payment of the balance the said purchaser hereby promises and binds herself to pay, and take up at maturity, the following described promissory notes, to wit: two for the sum of five hundred and seventy-five dollars each, drawn by the said Mrs. Boyd, to the order of, and endorsed by, George William Boyd, dated on the eighth day of December, eighteen hundred and thirty-six, and made payable respectively in six and twelve months after date, say, together - - - 1150

One for the sum of one thousand dollars, drawn by the said Mrs. Boyd to the order of, and endorsed by, the said George W. Boyd, dated on the fourteenth day of March, eighteen hundred and thirty-six, and made payable two years after date, - - - - - 1000

One for the sum of one thousand dollars, payable on the seventeenth day of November, eighteen hundred and fifty-one, with interest accruing thereon at the rate of six per cent. per annum, payable in advance, commencing the fourteenth day of November, 1837, and continuing until the principal is paid, which interest the said Mrs. Norton hereby binds herself to pay as above mentioned, - - - - - - 1000

And in payment of the balance, the said Mrs. Norton has furnished the following described promissory notes, to wit: one for the sum of eleven hundred and sixty-two dollars, drawn in favor of the said vendor, dated on the thirteenth of March, eighteen hundred and thirty-seven, and made payable in one year after date, - 1162

Two for the sum *of* two thousand dollars each, drawn by Charles Amstrong to the order of, and endorsed by, Patrick Doherty, dated on the 28th day of January, and made payable respectively in one and two years after, which said notes are signed, *ne varietur*, Wm. G. Lewis, notary, - - - - - - 4000

Two for the sum of two thousand dollars each, drawn by the said Patrick Doherty to the order of, and endorsed by, Charles Amstrong, dated on the 28th day of January, eighteen hundred and thirty-seven, and made payable respectively in one and two years after date, which said notes are also paraphed by the said Lewis, notary, - - - - - - 4000

Making, in all, the said sum of thirteen thousand and sixty-two dollars, - - - - - $13,062

The receipt of the five last described notes given by the said Mrs. Norton, and the said ready money, is hereby acknowledged by the said vendor.

The said four notes of two thousand dollars each were given by the said Charles Amstrong and Patrick Doherty to the said Mrs. Norton, in part payment for five lots of ground, situate in Faubourg Saulet, above this city, in the square bounded by Tchoupitoulas, Hunter, Benjamine, and New Levee streets, and designated by the numbers one, two, three, four, and five, on a plan drawn by Louis Bringier, surveyor general, under date of the thirteenth May, eighteen hundred and thirty-five, and annexed to an act passed on the seventh day of February, eighteen hundred and thirty-seven, in the office of William G. Lewis, a notary public in this city, by which act the said Charles Amstrong and Patrick Doherty purchased the said five lots of ground from the said Mrs. Norton, and by a clause in the same act the said Charles Amstrong and Patrick Doherty mortgaged the said five lots to the said Mrs. Norton, to secure the payment of the above described four notes and others.

The said lot number one forms the corner of Tchoupitoulas and Hunter streets, and measures twenty-four feet on the front by ninety-five feet in depth and front on the latter. The said lots Nos. two, three and four adjoin each other and the last described lot, and measure each twenty-four feet front, on said Tchoupitoulas street, by ninety feet in depth, between parallel lines. And the said lot number five

measures twenty-five feet front, on the said Hunter street, by ninety-six feet in depth, between parallel lines, American measures.

And here the said Mrs. Norton declares that she does, by these presents, subrogate the said Mrs. Boyd, her heirs and assigns, to all her rights on the said five lots of ground, as mortgaged, to the extent of the amount of the said four promissory notes, and hereby fully authorizes the said Mrs. Boyd to exercise the said rights in the same manner as she herself might or could have done. And in order to secure the punctual payment of the said five promissory notes, given by the said Mrs. Norton, she does, by these presents, specially mortgage and hypothecate the said property, now being conveyed to her said vendor, promising and binding herself not to alienate or encumber the same to the prejudice of this mortgage.

And here the said Mrs. Boyd declared, that whereas she had made application for a certain number of *slaves* of the capital stock of the Citizen's Bank of Louisiana, now, therefore, it is hereby agreed by her, that the said Mrs. Norton is to have the privilege of having the said *slaves* transferred to her at the current rates of the present day. And it is hereby further agreed, that if the said Mrs. Boyd should wish to discount any of the notes received by her for part consideration of this sale, the said Mrs. Norton is to have the preference of discounting them, at the rate of eight per cent. per annum.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of W. G. Latham and F. B. Vinot, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, with the said appearers and me *said*, on this thirteenth day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

(Original signed,) SUSAN G. BOYD,
ELIZABETH NORTON,
HARVEY NORTON,
W. G. LATHAM,
F. B. VINOT.
WM. CHRISTY,
Not. Public.

I certify the foregoing to be a true copy of the original in my current register.

[L. S.] (Signed,) WM. CHRISTY,
Not. Public.

NEW ORLEANS, *8th Nov.*, 1841.

Citation.

STATE OF LOUISIANA, *First Judicial District Court.*

GEORGE W. BOYD,
vs.
ELIZABETH DALTON, wife of HARVEY NORTON.

Mrs. Elizabeth Dalton, wife of Harvey Norton, and said Harvey

Norton, both residing in the parish of Jefferson: You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the first judicial district court, in ten days after the service hereof.

Witness the honorable A. M. Buchanan, judge of the said court, the 11th day of November, in the year of our Lord 1841.

(Signed) P. LA BLANC, [L. S.] *Deputy Clerk.*

Sheriff's Return.

Received November 13th, 1841, and on 15th said month, served copy of petition and citation on Mrs. Elizabeth Dalton, wife of Harvey Norton, in person.

Received November 16th, 1841.

(Signed) MANUEL J. GARCIA,
Sheriff of the parish of Jefferson.

Answer filed 27th November, 1841.

To the honorable judge of the first judical district court:

Elizabeth Dalton, wife of Harvey Norton, for answer to the petition of George W. Boyd, respectfully shows, that *shew* denies the death of his mother as is alleged; denies that he has any interest in the note sued on; wherefore she prays to be hence dismissed, &c.

(Signed) McKINNEY, *Att'y.*

Testimony filed, December 13th, 1841.

G. W. BOYD,
vs.
E. DALTON, wife of HARVEY NORTON.

Testimony taken in open court, December 13th, 1841.

Plaintiff offered in evidence a certified copy of a petition, and an order from the court of probates of Jefferson, recognising the plaintiff as the only heir of his deceased mother, Susan G. Boyd, filed in this court in the suit of Susan G. Boyd vs. Charles Amstrong, No. 17,548, of the docket of this court.

Document above referred to, filed December 6th, 1841.

To the honorable the probate court of the parish of Jefferson:

The petition of G. W. Boyd, at present in the State of New Jersey, respectfully shows, that Susan T. Boyd departed this life in the State of New York, about ; that she had previously resided in this parish, and has left the principal part of her property in the same. Your petitioner is the son and only heir of the deceased, and he prays that on making proof thereof he may be recognised as her only heir, and put into possession of her estate by judgment of this honorable court, and that your honor would do and

order whatever else may be useful and necessary in the case. In duty bound, &c.

(Signed) ISAAC T. PRESTON,
Att'y for Pet'r.

Seth W. Nye and William Florence, residing in the city of New Orleans, being duly sworn, doth depose and say, that the death of Mrs. Susan Boyd, in the month of April, 1841, is matter of notoriety, and defendants do not doubt of the fact; they further know from the said late Mrs. Boyd, and by long acquaintance with the family, that George W. Boyd, the petitioner, is her son and only heir.

(Signed) SETH W. NYE,
WM. FLORENCE.

Sworn to and subscribed at New Orleans, this 17th day of November, 1841.

(Signed) O. P. JACKSON, *Judge.*

Filed, November 20th, 1841.

F. DUGUE, *Judge.*

Order on Petition.

Let the petitioner be recognised as the only heir of his deceased mother, Susan G. Boyd, and let him be put in possession of her estate.

(Signed) F. DUGUE, *Judge.*

PARISH OF JEFFERSON, *November 20th*, 1841.

I hereby certify the foregoing, to be a true copy from the originals on file in the court of probates, and for the parish of Jefferson, State of Louisiana.

In testimony whereof, I have granted these presents under my signature and the impress of the seal of said court, this first day of November, eighteen hundred and forty-one.

(Signed) F. DUGUE, *Judge.*

Judgment rendered, December 13th, 1841.

GEORGE W. BOYD,
vs.
ELIZABETH DALTON, wife of HARVEY NORTON.

This cause came on to-day for trial before the court, Larue for plaintiff, McKinney for defendant.

When, after hearing testimony and pleading, the court considering the same, it is adjudged and decreed that the plaintiff recover of the defendant the sum of eleven hundred and sixty-two dollars, with legal interest on $1,162, from 17th March, 1838, date of maturity till paid, and costs of suit with privilege on the property described in the petition.

Judgment rendered December 13th, 1841.

Signed 18th December, 1841.

(Signed) A. M. BUCHANAN, *Judge.*

Sheriff's Return.

Received December 18th, 1841, and on the 22d said month, served certificate of judgment on Mrs. Elizabeth Dalton, wife of Harvey Norton, in person.

Returned December 27th, 1841.

(Signed) MANUEL J. GARCIA,
Sheriff of the Parish of Jefferson.

Fieri facias issued 19th January, 1842.

STATE OF LOUISIANA, *First Judicial District Court:*

The State of Louisiana, to the sheriff of the parish of Jefferson, greeting:

We command you in the of the State of Louisiana, and of the first judicial district court, that you demand from Elizabeth Dalton, wife of Harvey Norton, *in* the sum of one thousand one hundred and sixty-seven dollars, with legal interest on $1,162, from 17th March, 1838, till paid, and also the sum of twenty-one $\frac{87}{100}$ dollars costs, which George W. Boyd lately recovered by judgment of the district court, and if she shall not pay the same after legal demand, that then you cause the same to be made out of the personal estate of the said Elizabeth Dalton, wife of Harvey Norton, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found thereon; but if sufficient personal estate of said Elizabeth Dalton, wife of Harvey Dalton, exclusive of slaves, cannot be found in your district, that then you cause the said sum to be made of the real estate and slaves of said Elizabeth Dalton, wife of Harvey Norton, in your district, whereof she was owner on the 13th day of December last past, in whose hands soever the same may have come, and that you have those moneys before our said court, to render the said George W. Boyd for the judgment aforesaid, on or before the third Monday of March next, together with this writ.

Witness the honorable A. M. Buchanan, judge of said court, the nineteenth day of January, in the year of our Lord one thousand eight hundred and forty-two, and in the 66th year of the independence of the United States.

(Signed) W. F. WAGNER, [L. S.] *D'y Clerk.*

Sheriff's Return

Received January 19th, 1842, and, on the 16th February, 1842, seized the property mentioned in the copy of judgment inside of this writ, which was published for sale in the Constitution, a public newspaper published in the city of La Fayette, in French and English, from the sixteenth day of February, 1842, to the 18th of March, same year; and, after having complied and performed all the additional previous legal requisites, did offer the same at public

sale, at the New Exchange hotel, corner of Jackson and Leon streets, city of La Fayette, on Friday, the 18th March, 1842, at one o'clock, P. M.; but said property not bringing the two-thirds of the appraisement, was re-advertised from the 18th May to the 4th June, 1842, in the above mentioned paper, announcing said sale to take place at the above place, on Saturday the 4th of June, 1842, at one o'clock, P. M.; when Isaac T. Preston and Abner Phelps, being the highest and last bidders, the within described property was adjudicated to the said Abner Phelps and Isaac T. Preston for the price of seven thousand dollars, which was settled in the following manner, to wit: The sum of $133 04¼, for all costs, was paid to me in ready money, the purchasers assuming the payment of the assumption, in favor of Alexander Rentoril, of the sum of 1035 dollars twenty cents, the interest being included in said sum; also the assumption, in favor of George A. Waggaman, of $1000, which was granted by Robert McNair, per act passed before Theodore Seghers, notary public, on the 17th December, 1831; and for the balance the purchasers have furnished their bond, signed Isaac T. Preston and Abner Phelps, as principals, and Thomas Layton and Boxton Layton, as securities, of the sum of 4832 dollars, payable one year from said day of sale, bearing interest at five per cent., and special mortgage being retained on said property till paid.

Returned July 12, 1842.

(Signed) MANUEL J. GARCIA,
Sheriff of the parish of Jefferson.

STATE OF LOUISIANA,
First Judicial District Court.

I, John Lawson Lewis, clerk of the first judicial district court of the State of Louisiana, do hereby certify, that the above and foregoing thirteen pages do contain a full and complete transcript of the record of the case wherein George W. Boyd is plaintiff, and Elizabeth Dalton, wife of Harvey Norton, is defendant, instituted in this court, and now on the records thereof, under the No. 20,637.

In testimony whereof I have hereunto set my hand and the seal of said court, at the city of New Orleans, on this eighth day of December, in the year of our Lord one thousand eight hundred and forty-three, and in the sixty-eighth year of the independence of the United States of America.

[L. S.]

(Signed) JOHN L. LEWIS, *Clk.*

Fife $\frac{75}{100}$ dollars—fees for copy paid.

(Signed) P. LA BLANC, *Dy. Clk.*

Exhibit "*C.*"

Rules of Court.

It shall be the duty of the assignee, in all cases, as soon as practicable after his appointment, to file in court a petition for the sale of all the property assigned by the bankrupt, whether real or personal.

This petition shall, in all cases, be accompanied by a schedule, which shall contain—first, a description of the property; second, a suggestion of the terms and conditions, the time and place of the sale, which, in the assignee's opinion, shall be most suitable for the interest of the *conditions*.

This application for sale shall be notified to the creditors in general, by ten days' advertisement, to be inserted, at least three times, in two newspapers, unless specially ordered otherwise. In addition to this notice, personal notices shall be served on all creditors residents of New Orleans, who have a special mortgage lien or privilege on any of the property, whether moveable or immoveable, so far as the names of such creditors can be ascertained by the assignee from the schedule of the bankrupt *it* the respective parishes where the property is situated.

Creditors by mortgage, lien, or privilege, shall, in all cases, be permitted to fix the terms of sale of the property subject to their claims, provided that in no case shall they be permitted, in opposition to the assignee, to fix terms of credit shorter than those to which the bankrupt himself was entitled.

The order of sale, when granted, shall ipso facto annul the mortgage, liens, and privileges existing on the property ordered to be sold, and the recorder of mortgages shall, on the presentation of such order, cancel all inscriptions existing on their records against such property, and the mortgages, liens, and privileges shall attach the proceeds of the sale in the same manner, to the same extent, and with the same effect, as to the property sold.

Creditors by mortgage lien or privilege shall in all cases have the right to purchase the property subject to their claims, and to offset against the price the amount of such claims; provided, however, that proof of such claims shall have been previously filed in the registry of the court; and provided, also, that such right of offset shall not extend to such sums as, in the opinion of the assignee, may be required for satisfying previous claims on the proceeds of the sale—such as the law's charges, expenses of sale, previous mortgages or privileges, or others of a like nature, in the event of disagreement between the purchaser and assignee as to the amount which the latter may require to be paid by the purchaser, the matter shall be submitted to the court, decided summarily on twenty-four hours previous notice given by either party to the other.

The offset established in the preceding rule shall in all cases be considered as provisional only, and subject to contest, by the credi-

tors in general, on the filing of the report by the commissioner in bankruptcy; the offset shall be subject to be increased or diminished, or entirely disallowed by the judgment to be rendered on the part of such commissioner in bankruptcy; and the property, if immoveable, shall remain in the possession of the purchaser, subject to mortgage in favor of the assignee for the amount of the offset allowed by the assignee, till the judgment of the court shall have been rendered as aforesaid on the report of the commissioner.

If the property shall consist of moveables not susceptible of being mortgaged, the purchaser shall give bond, with one or more sureties, to the satisfaction of the assignee, for the payment of the sum allowed in offset, in the event of its being diminished or disallowed by the judgment on the report as aforesaid.

CLERK'S OFFICE, NEW ORLEANS,
United States District Court, Eastern District of Louisiana.

A true copy of record.

[L. s.] Witness my hand, and the seal of the court, this 12th day of December, A. D. 1843.

(Signed) N. R. JENNINGS, *Clerk.*

Demurrer.

To the honorable the circuit court of the United States of the fifth circuit, in and for the eastern district of Louisiana, sitting in equity:

The demurrer of Isaac T. Preston, Abner Phelps, and George W. Boyd, defendants to the bill of complaint of Richard Nugent, assignee of Elizabeth Norton, a bankrupt complainant, filed in this honorable court against him, with Abner Phelps and George W. Boyd.

These defendants admitting all the facts stated in the bill of complainants, which they cannot deny, yet aver, that there is nothing in said bill of complaint, sufficient in law to call these defendants before this honorable court, but there is good cause for demurrer, and for special causes of demurrer. They allege that the petition, decree, and appointment of assignee, did not, in law, divest the district court, of the first district of Louisiana, of jurisdiction to enforce the special mortgage granted by the said bankrupt upon the two lots described in the bill of complaint, and which mortgage belonged to George W. Boyd.

2. That the United States —— court, sitting in bankruptcy, has no authority, under the law, to adopt or enforce the rules set forth and annexed; said rules are against the law and void.

3. That the said George W. Boyd, being a mortgaged creditor of the bankrupt, Elizabeth Norton, was not bound in law to submit his claims to the judgment or decision of this court, in bankrupt sitting.

4. That the title conferred by the sheriff in this case is a good title against the assignee of Elizabeth Norton, a bankrupt.

And these defendants denying authority in this court, and averring the bill of complaint to be insufficient in law to call them before this honorable court, and demurring thereto, pray that complainants be dismissed, and they discharged with costs. As in duty bound.

(Signed) ISAAC T. PRESTON,
for himself and the Defts.

Minutes.

RICHARD NUGENT, assignee of Elizabeth Norton, vs. G. W. BOYD & al. } Wednesday, 3d Jan'y, 1844.

This day came the parties by their counsel, L. C. Hornsby, for complainant, and I. T. Preston, for defendants, and, by consent, the case is submitted to the court for decision, upon the pleadings and documents annexed.

Decree.

RICHARD NUGENT, assignee of Elizabeth Norton, vs. GEO. W. BOYD. } In equity.—No. 1174.

The court having maturely considered this, do now order, adjudge, and decree, that the bill filed herein be dismissed at complainant's costs.

Opinion.

RICHARD NUGENT, assignee, &c., vs. G. W. BOYD and others. } Circuit court of the United States.

This is a bill in equity, presented by an assignee in bankruptcy, to set aside a certain sale, made under a writ of seizure and sale from the district court of Louisiana, upon the ground that the district court of the United States was, by the bankrupt law passed by Congress, on the 19th of August, 1841, vested with exclusive jurisdiction over all matters appertaining to the settlement of the affairs of the bankrupt, and that, consequently, the sale made by the district court of Louisiana, has transferred no legal title to the property. The bill further claims the property, sold as a part of the property of the bankrupt, to be sold or otherwise disposed of under the orders of the district court of the United States. It appears that the property in question consists of real estate, and that the same was sold to satisfy a special mortgage held by the creditor, who obtained the order of seizure and sale from the State tribunal.

I have, after an attentive consideration of the various allegations in the bill, ordered the same to be dismissed, and shall now proceed to state very briefly the grounds upon which I acted. In the first place, I do not consider that there is any equity in the bill; the property was specially mortgaged to satisfy the claim of the creditor who demanded the sale; and it does not appear that in the assertion of his right he has in any manner interfered with the rights of the other creditors of the bankrupt. It does not appear that any doubt existed as to the validity of the mortgage, or that the creditor has obtained any right or any advantage over the other creditors, which the district court, sitting in bankruptcy, would not have been bound to award him under the express provisions of the bankrupt law. It is quite clear that the liens and mortgages which are valid under the State law must be protected by the district court of the United States, sitting in bankruptcy, and it will not be pretended that the creditor, at whose instance the property in question was sold, would not have been entitled, under any and all circumstances, to the proceeds of that property, to satisfy the amount alleged to be due him. What benefit would then accrue to the general creditors of the bankrupt, by the interference of this court in a matter which seems to have been fairly and finally adjudicated? While I am well satisfied that no good would arise from such an interference, I am equally well satisfied that great injustice would be done, both to the mortgagee creditor and to the estate of the bankrupt, by subjecting both unnecessarily to additional costs and expenses.

I agree fully in the opinion that, upon the ground of expediency, the jurisdiction of the district court of the United States over all the property of the bankrupt, mortgaged or otherwise, should be exclusive; but I do not understand the bankrupt law to render it so. Where a creditor, by virtue of a special mortgage, elects to foreclose that mortgage before a State tribunal, the federal court is not called upon to interpose, except in cases where, from the nature of the case, wrong or injustice may be done to other creditors in interest, or where the mortgage itself may be contested.

I wish it, however, to be distinctly understood, that I am fully of opinion that the district court of the United States is vested with jurisdiction over mortgaged property belonging to the bankrupt, and that when a proper case is shown it has power to foreclose a mortgage, and to do all other acts necessary to bring about a final distribution and settlement of the bankrupt estate. I am also of the opinion that, in a case where a creditor calls in question the validity of a mortgage held by another creditor, it is the duty of the said court to exercise jurisdiction over the questions involved, and if necessary to declare the mortgage null and void.

In the case before me no such question is involved, and I see no reasons why the equity powers of this court should be exercised to do that which cannot change the rights of the parties interested,

but which would have the effect of doing a positive injustice to the mortgagor creditor, by subjecting his property to useless costs and expenses.

It is therefore ordered that the complainant's bill be dismissed.

Petition of appeal.

To the honorable the circuit court of the United States for the eastern district of Louisiana:

The petition of Richard Nugent, assignee of the estate of Elizabeth Norton in bankruptcy, respectfully shows, that he is informed, and believes, there is error in the final judgment of this court, rendered in his bill of complaint filed in this court against Preston, Boyd, and Phelps.

Whereupon, he prays that an appeal be allowed to the Supreme Court of the United States, on his giving bond according to law.

(Signed,) L. C. HORNEBY, *Atty.*

Order.

Let an appeal be granted in this case as prayed for, on the complainant, R. Nugent, assignee of Elizabeth Norton, giving bond, with Wm. C. Micou as security, in the sum of five hundred dollars, conditioned according to law.

(Signed,) THEO. H. McCALEB,
U. S. Judge.

Agreement.

Richard Nugent, Assignee of estate of Elizabeth Norton, vs. Preston, Phelps, and Boyd.	Bill in chancery, decree, and appeal to Sup. Court, U. S.

It is agreed that this case be submitted to the superior court for the decision upon the printed record and arguments, which will be filed immediately on its arrival in Washington.

(Signed,) RICH'D NUGENT,
Ass. in bankruptcy of E. Norton.

New Orleans, *Feb. 5th*, 1844.

Bond.

Know all men by these presents, that we, Richard Nugent, assignee of Elizabeth Norton, as principal, and Wm. C. Marvin and H. Lockett as securities, are held and firmly bound, jointly and severally, unto George W. Boyd, Isaac T. Preston, and Abner Phelps, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said George W. Boyd, Isaac T. Preston, and Abner Phelps, [their] heirs, executors, administrators, and assigns; for which payment, well and truly to be

made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the third day of February, in the year of our Lord eighteen hundred and forty-four.

Whereas Richard Nugent, assignee of Elizabeth Norton, has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, for an appeal to the Supreme Court of the United States from a judgment or decree rendered on the 30th day of January, 1844, in the circuit court of the United States for the eastern district of Louisiana, sitting in chancery, in the suit of Rich'd Nugent, assignee of Elizabeth Norton, vs. G. W. Boyd.

Now, the condition of the above obligation is, that we, the above bounded Richard Nugent, assignee of Elizabeth Norton, and Wm. C. Micou and H. Lockett, will well and truly pay to the said George W. Boyd, Isaac T. Preston, and Abner Phelps, the defendants in said bill of chancery, all such damages as said defendants may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) RICHARD NUGENT, [SEAL.]
Assignee in bankruptcy of E. Norton.
W. C. MICOU, [SEAL.]
H. LOCKETT. [SEAL.]

Signed, sealed, and delivered in the presence of—

CLERK'S OFFICE,
United States Circuit Court 5th circuit.

I, Duncan N. Hennen, clerk of the United States circuit court for the 5th circuit and eastern district of Louisiana, do hereby certify, that the foregoing thirty-five pages contain a full, faithful, and true transcript of the record and proceedings in the case of Richard Nugent, assignee of Elizabeth Norton, vs. George W. Boyd, Isaac T. Preston, and Abner Phelps, No. 1,174, so far as the same now remains on file in the said court.

Witness whereof, I have hereunto signed my name and affixed the seal of said court, at the city of New Orleans, this 5th day of February, A. D. 1844, and 68th year of the independence of the United States. [L. S.]

For D. N. HENNEN, *Clerk.*
J. G. A. HOIT, *Dep. Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court of the United States for the eastern district of Louisiana, do hereby certify that J. Q. A. Houit, who signed the foregoing certificate, is the deputy clerk of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, and was at the time of so doing, and that due faith and credit are

due, and ought to be given, to his acts as such; and that the foregoing certificate is in due form of law.

[L. S.] Witness my hand and seal, this 5th day of February, A. D. 1844.

THEO. H. McCALEB,
U. S. Judge.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Richard Nugent, assignee of Elizabeth Norton, in bankruptcy, and George W. Boyd, Issac T. Preston, and Abner Phelps, a manifest error hath happened, to the great damage of the said Richard Nugent, assignee of Elizabeth Norton, as by his complaint appears: we being willing that error, if any hath been, should be duly correct, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fifth day of February, in the year of our Lord one thousand eight hundred and forty-four.

For DUNCAN N. HENNEN,
Clerk of the United States Circuit Court, and Eastern District of Louisiana.

[SEAL.] J. G. A. HOIT, *Dep. Clerk.*

(Endorsed.)

Service of citation of appeal is hereby accepted for all the appellees, and it is consented that the case on appeal be immediately submitted for decision to the Supreme Court of the United States, on printed briefs.

ISAAC T. PRESTON,
For himself and Defendants.

Filed,

1493.

SUPREME COURT OF THE UNITED STATES.

No.

THE UNITED STATES, APPELLANT,

vs.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE PHŒNIX BANK, WM. J. HUBBARD, AUGUSTUS H. FISKE, AND MATHEW S. PARKER.

APPEAL FROM THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday the sixteenth (the fifteenth being Sunday) day of October, in the year of our Lord one thousand eight hundred and forty-three, before the honorable Joseph Story, associate justice, Peleg Sprague, district judge:

THE UNITED STATES OF AMERICA, complainants in equity,
versus
The PRESIDENT, DIRECTORS, AND COMPANY of the Phœnix bank, a corporation established by an act of the Commonwealth of Massachusetts, at Charlestown, in said district, respondents.

The bill of complaint in this case was filed in the clerk's office on the eighth day of April, A. D. 1843, and is as follows, viz:

To the honorable the justices of the circuit court of the United States for the first circuit, to be held at Boston, in the Massachusetts district:

The United States of America, being their bill against the president, directors, and company of the Phœnix bank, in Charlestown, in the district of Massachusetts, a corporation established by the laws of Massachusetts, William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, all of Boston, in the district of Massachusetts, esquires, and all citizens of the State of Massachusetts; and therefore your orators complaining, show and represent, that by an act of the legislature of the Commonwealth of Massachusetts, passed on the thirteenth day of March, in the year eighteen hundred and thirty-two, certain persons were incorporated for the purpose of transacting banking business, under the name and style of the president, directors, and company of the Phœnix bank, who are defendants herein named, and so to continue until the first day of October, in the year eighteen hundred and fifty-one, with all the powers and privileges, and subject to all the duties, liabilities, and requirements contained in a certain act of the said legislature, passed the twenty-eighth day of February, in the year eighteen hundred and twenty-nine, entitled "an act to regulate banks and banking;" and in another act passed the twenty-eight day of February, in the year eighteen hundred and thirty-one, entitled "an act to continue the banking corporations therein named, and for other purposes;" and it was further provided in the said first named act, that the said bank should be established in Charlestown, which

is in the district of Massachusetts aforesaid. And the said act of incorporation was duly accepted by the corporators, and the said bank was afterwards established in the town of Charlestown aforesaid, and went into operation there according to law, and continued to transact the usual banking business in said Charlestown, from and after its organization as aforesaid, until some time in the year eighteen hundred and forty-two, hereinafter more particularly set forth. And the complainants further show unto your honors, that on or about the second day of October, in the year eighteen hundred and forty-two, the said corporation refused, and ever since hitherto has refused, to make payment of its just debts, and became, and ever since has been, publicly and notoriously insolvent, and legally bankrupt; and the bank commissioners of the Commonwealth of Massachusetts, by virtue of the duty and authority vested in them by an act of the said Commonwealth passed *passed* on the twenty-third day of February, in the year eighteen hundred and thirty-eight, on or about the sixth day of the same October, made complaint to the justices of the supreme judicial court for the commonwealth aforesaid, that the said banking corporation had exceeded its powers, and failed to comply with the rules, restrictions, and conditions provided by law, and they prayed the said court to issue their injunction, to restrain the said corporation from further proceedings with its business, and for the appointment of a receiver or receivers to take possession of all the property and effects whatsoever of the corporation, and to apply the same in payment of the liabilities of said corporation, subject to such rules and orders as might from time to time be prescribed by the said court and by law. And afterwards, on the eighteenth day of October aforesaid, the said president, directors, and company of the Phœnix bank having been duly notified, appeared before the said justices, and making no objection to the granting of the petition of the said bank commissioners, and it appearing to the said court to be necessary, for the security of the bill holders and other creditors of the said bank, that receivers of the estate and effects thereof should be appointed, the said justices thereupon made their order and decree in the said cause, appointing William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, all of Boston, in the county of Suffolk, who are hereinafter named as defendants, to be the receivers of the said banking corporation, and to take charge of all the estate and effects thereof, and to collect all the debts and property due and belonging to said corporation, and to pay all debts of the said corporation as they should thereafterwards be directed by the said court; by force of which decree, and of the statute of Massachusetts last mentioned, all the estate and effects of the said corporation, real and personal, became and were assigned to and vested in the said receivers, and the survivors and survivor of them and their successors, in trust for the creditors of the said corporation, including all those who had deposited moneys therewith.

And the complainants further aver, that the said Hubbard, Fiske and Parker have duly qualified themselves to perform and execute the said trust, and have taken the property and effects of the said corporation into their possession, and have collected divers large sums of money due to the said corporation, and have made some progress in the execution of the trusts aforesaid.

And the complainants further aver, that at divers times during the year eighteen hundred and forty-two, and prior to the insolvency of said bank, divers large sums of money in cash, belonging to the said United States, were deposited with the said corporation for safe-keeping, the said corporation being duly empowered by law to take and receive such deposits of money by sundry officers and servants of your complainants, and to be drawn out of said bank from time to time, and as your complainants should see occasion to do so; and on the said second day of October, eighteen hundred and forty-two, the whole aggregate of your complainants' moneys so deposited and remaining undrawn amounted to the sum of thirty-nine thousand six hundred and fifty dollars and sixteen cents, whereof the sum of eighteen thousand nine hundred and thirty dollars and one cent was the balance of the deposits made in behalf of your complainants by Joseph Wilson, a purser in the navy of the United States; and the sum of twelve thousand six hundred and sixteen dollars and twenty-three cents was the balance of the deposits made on behalf of your complainants by Thomas M. Taylor, a purser in the said navy; and the sum of six thousand two hundred and seventy-three dollars and ninety-seven cents was the balance of the deposits made on behalf of your complainants by Edward N. Cox, a purser in the said navy; and the sum of sixteen hundred and eighty-nine dollars and ninety-five cents was the balance of the deposits made on behalf of your complainants by John B. Montgomery, a captain in the navy aforesaid; and the sum of one hundred and fifty dollars was the balance of the deposits made on behalf of your complainants by Francis B. Stockton, a purser in the said navy.

And your complainants further allege, that all the said several sums of money deposited with the said banking corporation by the persons aforenamed, were the moneys and property of the United States, and not the moneys of the said Wilson, Taylor, Cox, Montgomery, and Stockton, nor either of them, and were received in deposit by the said corporation with notice that the same were the proper moneys of the said United States, and not the proper moneys of the said officers who deposited the same. And the said banking company, when they accepted and received the said sums of money as aforesaid, engaged to account for and pay over the same to the said officers respectively by whom they were deposited, or to and upon the checks of each of them respectively, to be drawn by him in his official capacity, unless otherwise ordered and directed by the Government of the United States; in which case

they engaged to pay said sums of money to such other officer or agent of the United States as should be duly appointed by the said Government to demand and receive the same.

And your orators further allege, that on or about the twenty-third day of August, in the year eighteen hundred and forty-two, the aforesaid Edward N. Cox deposited sundry large sums of money with the said banking company for safe keeping, in his own name, and on his private account; and the said company accepted and received the said sums of money, and engaged to account for and pay over the same to the said Cox, or to or upon the proper checks or orders of him the said Cox, to be drawn by him in his private capacity, and not as an officer of the United States. And by means of the premises the said corporation became, and was, justly indebted, on the said second day of October, unto the United States, in the sum of thirty-nine thousand six hundred and sixty dollars and sixteen cents aforesaid, whereof your orators, on or about the third day of December, in the year aforesaid, by Franklin Dexter, esquire, their attorney in and for the district of Massachusetts, gave notice unto the said Hubbard, Fiske and Parker, assignees, as aforesaid, of the estate and effects of the said corporation, and demanded payment of the said sum of money in full, and without deduction, according to the act of Congress in such case made and provided, and your orators well hoped that the said assignees would comply with the said demand; but now so it is, may it please your honors, that the said Hubbard, Fiske and Parker, absolutely refuse to comply with the said demand.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this sort are cognizable and relievable, to the end that the said William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, and the said president, directors, and company of the Phœnix Bank may, if they can, show [cause] why your orators should not have the relief hereby prayed, and may, (the said Hubbard, Fiske and Parker, upon their several and respective corporate oaths, and the said corporation under its corporate seal,) according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note here under written they are respectively required to answer, that is to say:

1st. Whether the said act of incorporation was not duly accepted by the corporators therein named, and their associates and assigns, and the said corporation duly organized; and whether the said corporation did not go into operation as is above stated, and continue to transact business as a banking company until the second (or some other, and what) day of October, in the year eighteen hundred and forty-two.

2d. Whether the said corporation did not, on the said second, or

some other, and what day in October, aforesaid, become insolvent, and refuse to make payment of its just debts, and whether it has not ever since hitherto continued to be insolvent.

3d. Whether the said William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, were not duly appointed to be the receivers of the estate and effects of the said corporation, and have accepted and qualified themselves to perform the said trust, and have taken possession of, and now have in their custody and possession, all the estate and effects of the said corporation, and what is the amount thereof.

4th. Whether the said Joseph Wilson, Thomas M. Taylor, Edward N. Cox, John B. Montgomery, and Francis B. Stockton, did not each respectively deposit in and with the said banking company the sums of money above mentioned, and in the form and manner above stated and set forth, or some other, and what, sums of money in some other, and what, form and manner, in particular.

5th. Whether the moneys so as aforesaid averred to have been deposited by the said Wilson, Taylor, Cox, Montgomery, and Stockton, respectively, in their characters and capacity of officers of the United States, were not the proper moneys of the United States, and were not known or presumed by the said company or its officers to be the proper moneys of the United States, and not the proper moneys of the said persons by whom they were deposited.

6th. Whether all the said deposits of money were not made by the said Joseph Wilson, Thomas M. Taylor, Edward N. Cox, John B. Montgomery, and Francis B. Stockton, respectively, with the said bank, and were not received by the said bank from the said persons in their public and official character and capacity of officers of the United States.

7th. Whether the said deposits of money, made as aforesaid, were not entered in the books of the said bank to the credit of the United States, and if not, to whose credit the same were entered. And if the same were entered and credited in the names of the said Wilson, Taylor, Cox, Montgomery, and Stockton, respectively, whether they were not so credited to them on the said books in their public and official characters and capacity of officers of the United States, or how otherwise.

8th. Whether any checks have been drawn by all or either of the said officers, and which of them, against any deposits of money made by them respectively in manner aforesaid, and whether any such checks have been paid by the said bank, and whether all or any of said checks were not drawn and subscribed by the said officers respectively in their public and official character of officers of the United States.

9th. Whether said corporation or banking company did not know, or had not reason to believe, and whether the persons who filled the stations of president and cashier of said bank, or either, or which of them, did not know, or had not reason to believe, that the

moneys, deposited as aforesaid by the said Purser Wilson, Purser Taylor, Purser Cox, Captain Montgomery, and Purser Stockton, respectively, were the proper moneys of the United States.

10th. Whether the said banking company at some, and what, time or times before the second day of October, eighteen hundred and forty-two, did not receive and accept deposits of money from the said Edward N. Cox, in his private and individual capacity, and upon his private and individual account. And if received, what were the dates and amounts of all the said last mentioned deposits of money. And whether any of said moneys have been paid out by the said bank on the private checks of the said Cox, and what sums have been so paid.

11th. What were the dates and amounts of all the deposits of money made with the said corporation by each of the said officers of the United States, not in his private and individual name and capacity, during the period of three years, prior to the second day of October aforesaid.

And your orators pray, that an account may be taken of the sums that shall be found due for and upon the deposits aforesaid, and that the said bank, and the said Hubbard, Fiske and Parker, the receivers and assignees as aforesaid, may be decreed to pay the same in full, and without deduction, unto your orators, with interest thereon, from the second day of October, and that your orators may have such further or other relief in the premises, as the nature and circumstances of the case may require, and to your honors may seem meet.

May it please your honors to grant to your orators a writ of subpœna, directed to the said president, directors, and company of the Phœnix Bank, the said William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, thereby commanding them, and every of them, at a certain day to appear before your honors, and then and there full, true, direct, and perfect *to* answer to make to all the interrogatories aforesaid, and further to stand to, abide, and perform such further order, direction, and decree therein, as to your honors shall seem meet.

THE UNITED STATES,
By FRANKLIN DEXTER,
Dist. Att'y.

All the defendants are required to answer each and all the interrogatories above written.

Subpœna.

Whereupon a subpœna issued, directed to the president, directors, and company of the Phœnix Bank, and William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, of Boston, in said district, commanding them to be and appear before said circuit court at the rules, to be holden at the office of the clerk of said court in Boston, in said district, on the first Monday, being the first day of

May, A. D. 1843, to answer to said bill of complaint, on which the marshal made return as follows, viz:

UNITED STATES OF AMERICA, *Massachusetts district:*

BOSTON, *April* 8, 1843.

Pursuant hereunto, I have summoned the within named corporation, by giving to the president thereof, James Hunnewell, in hand, a true and attested copy of the subpœna for said corporation to appear as herein directed. Also, I summoned the within named "Hubbard, Fiske and Parker," by giving to each in hand a true and attested copy of this subpœna, to appear as herein directed respectively.

HENRY HARRIS,
U. S. Dep'y Marshal.

Demurrer of Wm. J. Hubbard, Augustus H. Fiske, Matthew S. Parker.

On the 18th day of October, A. D. 1843, the following demurrer of William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, was filed in the clerk's office, viz:

The demurrer of William J. Hubbard, Augustus H. Fiske, and Matthew S. Parker, three of the defendants to the bill of complaint of the United States of America.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainants have not by their said bill made such a case as entitles them, in this court in equity, to any discovery from these defendants respectively, or any of them, or to any relief against them, as to the matters contained in the said bill or any of such matters; and that any discovery which can be made by these defendants, or any of them, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainants for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court in equity touching any of the matters complained of.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

WM. J. HUBBARD,
AUGUSTUS H. FISKE,
M. S. PARKER.

The subscribers, defendants above named, who have signed the foregoing demurrer, hereby declare that the said demurrer is not interposed for delay.

WM. J. HUBBARD,
AUGUSTUS H. FISKE,
M. S. PARKER.

OCTOBER 18, 1843.

DISTRICT OF MASSACHUSETTS, *ss.*

Sworn to before me.

EDW'D G. LORING, *Commr.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

BENJ'N RAND,
Of Counsel for Defendants.

Demurrer of President, Directors, and Company of the Phœnix Bank.

On the 1st day of January, A. D. 1844, the following demurrer of the president, directors, and company of the Phœnix Bank was filed in the clerk's office, viz:

The demurrer of the President, Directors, and Company of the Phœnix Bank, the defendants to the bill of complaint of the United States of America.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainants have not, by their said bill, made such a case as entitles them, *to* this court in equity, to any discovery from these defendants, or any of them, or to any relief against them, and to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or any of them, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainants, for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court in equity, touching any of the matters complained of, whereof and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they, or either of them, shall be compelled to make any further or other answers to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

JAMES HUNNEWELL, [SEAL.]
President of Phœnix Bank.

The said Hunnewell, president of the said bank, hereby declares that the above demurrer is not interposed for delay.

JAMES HUNNEWELL.

Sworn to before me, ——— ———, *Comm'r.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

BENJ'N RAND,
of counsel for defendants.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

This first day of January, A. D. eighteen hundred and forty-three, personally appeared before me the above named deponent, and made oath that the foregoing affidavit is true, so far as the matters therein contained are within his own knowledge, and that so far as stated on the information of others, he believes them to be true.

EDWARD G. LORING, *Commissioner.*

This bill of complaint was entered at a circuit court held on the fifteenth day of May, A. D. 1843, and there was continued to the October term, A. D. 1843, of this court; and now the said bill of complaint, and the said demurrer of the several defendants, having been seen and understood by the court, it is, by consent of parties, ordered, adjudged, and decreed, that the said bill do stand dismissed, reserving to the plaintiffs the right to appeal.

Whereupon the plaintiffs from the said decree do claim an appeal to the Supreme Court of the United States, next to be holden at Washington on the second Monday of January, A. D. 1844, and the same is accordingly allowed by the court.

I, Francis Basset, clerk of the circuit court of the United States for the district of Massachusetts, hereby certify that the foregoing is a true transcript of the record of said cause.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the said circuit court, this twenty-[ ] seventh day of January, in the year of our Lord one thousand eight hundred and forty-four, and in the sixty-eighth year of the independence of the United States of America.

FRANCIS BASSET, *Clerk.*

Filed,

1498

SUPREME COURT OF THE UNITED STATES.

No. 119.

JAMES BARRY, PLAINTIFF IN ERROR.

vs.

HAMILTON R. GAMBLE.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

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J. & G. S. GIDEON, printers.

STATE OF MISSOURI, *to wit:*

The following is a copy of a writ of error, issued from the office of the clerk of the supreme court of the State aforesaid, within and for the second judicial district, to wit:

STATE OF MISSOURI, *second judicial district, ss:*

The State of Missouri to the judge of the circuit court, in the third judicial circuit, in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the circuit court, within and for the county of Lincoln, in said district, wherein Hamilton R. Gamble is plaintiff, and James Barry is defendant, in an action of trespass and ejectment, wherein judgment was rendered at the August term of the circuit court, for the said county of Lincoln, in the year of our Lord 1840, in favor of said plaintiff, manifest error hath intervened to the great damage of said defendant, as by his complaint we are informed; now, we being willing, that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in that behalf, do command you, that you send to us, distinctly and openly, under your seal, the record and proceedings in the cause aforesaid, as fully as the same remains of record before you in said court, so that we may have them before us at our supreme court, to be begun and held at the town of Palmyra, in the county of Marion, in said State, on the third Monday in October next, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting the error, what of right and according to law ought to be done.

Given under my hand, and the seal of our said supreme court, done at office in Palmyra, at the district aforesaid, on this 19th day of [L. S.] September, in the year of our Lord 1840.

STANTON BUCKNER, *Clerk.*

Upon said writ of error is the following endorsement, to wit:

STATE OF MISSOURI,
Lincoln circuit court, third judicial circuit, ss:

In obedience to the command of the within writ, I herewith return the record and proceedings in the cause within mentioned, as fully as the same remains of record in our said circuit court.

In testimony whereof, I, Francis Parker, clerk of said circuit court, in the county and State aforesaid, have hereunto set my hand, and [L. S.] affixed the seal of said court at office, in the said county of Lincoln, this 8th day of October, 1840.

FRANCIS PARKER, *Clerk.*

In obedience to said writ of error, the following transcript was filed in the office of clerk of the supreme court of the State of Missouri, within and for the second judicial district aforesaid, to wit:

STATE OF MISSOURI, *county of Lincoln, ss:*

Be it remembered, that on the 7th day of August, A. D. 1838, Hamilton R. Gamble, by his attorney, filed in the office of the clerk of the circuit court, of the county of Lincoln, in the State of Missouri, a record certified to said court from the circuit court of the county of Saint Charles, in the State aforesaid, in an action of trespass and ejectment, commenced on the 6th day of October, 1837, in the circuit court of the county of Saint Louis, in said State, by Hamilton R. Gamble, plaintiff, against James Barry, defendant; which record is in the words and figures following, to wit:

STATE OF MISSOURI, *county of St. Charles, ss:*

Be it remembered, that heretofore, on the 28th day of March, A. D. 1838, Hamilton R. Gamble, by his attorney, filed in the office of the clerk of the circuit court for St. Charles county, a certified transcript from the office of the clerk of the circuit court, for the county of St. Louis; which is in words and figures following, to wit:

STATE OF MISSOURI, *county of St. Louis, sct:*

Be it remembered, that heretofore, to wit, on the twenty-sixth day of October, one thousand eight hundred and thirty-seven, Hamilton R. Gamble, by his attorney, filed in the office of the clerk of the circuit court within and for the said county of St. Louis, his declaration; which is in the words and figures following, to wit:

"In the circuit court, November term, 1837, Saint Louis county, to wit:

"Hamilton R. Gamble, by his attorney, complains of James Barry, of a plea of trespass and ejectment. For that the said plaintiff, on the first day of October, in the year eighteen hundred and thirty-seven, at the county aforesaid, was entitled to the possession of a certain tract of land, situate in the county of St. Louis aforesaid, in township forty-five north, of the base line, in ranges six and seven east, of the fifth principal meridian, being United States survey number two thousand six hundred and fourteen, being bounded on the south, in part, by land surveyed for M. L. C. Papin; on the east by lands of the common fields of the Grand Prairie; on the north, in part, by a tract of land, granted to Auguste Chouteau; the land above described being the same located under a New Madrid certificate, issued to Baptiste Lafluer, or his legal representatives, and containing six hundred and forty acres. And the said plaintiff being so entitled to the possession of the said premises as aforesaid, the said defendant afterwards, to wit, on the day and year aforesaid, at the county aforesaid, with force and arms entered into the said premises, and unlawfully withholds from the said plaintiff possession thereof, to the damage of the said plaintiff of two thousand dollars; and therefore he sues, &c.

"J. SPALDING, *attorney for plaintiff.*"

Whereupon, the clerk of the said circuit court issued a summons, in words and figures following, to wit:

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the county of St. Louis, greeting:

We command you to summon James Barry, if he be found in your county, to appear before the judge of our circuit court, on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the second Monday of November next, then and there to answer unto Hamilton R. Gamble, of a plea of trespass and ejectment to the damage of said plaintiff of two thousand dollars; and have you then there this writ.

Witness, John Ruland, clerk of our said court, and the seal thereof hereto affixed, at office, in the city of St. Louis, this twenty-sixth [L. S.] day of October, in the year of our Lord eighteen hundred and thirty-seven.

JOHN RULAND, *Clerk.*

On which said summons was the following sheriff's return, to wit:

"Executed this writ by reading it, and the declaration, to James Barry, the defendant, on the 28th day of October, 1837, in the county of St. Louis.

JAMES BROTHERTON, *Sheriff.*
By JOSEPH W. WcCLUNG, *D. sheriff.*"

And afterwards, to wit, on the fifteenth day of *of* November, in the year aforesaid, the following proceedings were had in said cause, to wit:

HAMILTON R. GAMBLE
vs. } Ejectment.
JAMES BARRY.

The judge of this court being interested in the subject-matter of this suit, it is ordered, that the venue be changed to the county of St. Charles, in the eighth judicial circuit of this State, and that the clerk of this court make out and transmit, according to law, to the clerk of the circuit court of said county of St. Charles, a complete transcript of the record and proceedings in this cause, together with all the original papers appertaining to, and filed in the same.

STATE OF MISSOURI, *county of St. Louis, ss:*

I, John Ruland, clerk of the circuit court, in and for the county of St. Louis aforesaid, hereby certify the foregoing to be a true and complete transcript of the record and proceedings of said court, in the case of H. R. Gamble vs. J. Barry, as the same now remains in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at office, the city of St. Louis, this ninth day [L. S.] of February, eighteen hundred and thirty-eight.

JOHN RULAND, *Clerk.*

And afterwards, to wit, at the April term of the circuit court, for St. Charles county, A. D. 1838; and on the first day of said term, it being

the 2d day of April, A. D. 1838, in the record and proceedings of said court, is the following, to wit:

Hamilton R. Gamble vs. James Barry, defendant, ejectment certified from St. Louis county. Petition supported by affidavit filed for change of venue; which petition and affidavit *is* in words and figures following, to wit:

To the circuit court of St. Charles county, in Missouri.

I, James Barry, represent, that I am defendant in a certain cause now pending in this court, wherein Hamilton R. Gamble is plaintiff, the same being an action of ejectment for the tract of land on which I now live, in St. Louis county. I further represent, that said plaintiff has been long and generally acquainted in the county of St. Charles, and has in said county a number of influential relations and friends, and that he has an undue influence over the inhabitants of said county, and that owing to that cause, I fear that I could not obtain justice in the trial of said cause in said county. I therefore pray, that a change of venue may be awarded in said cause, and that it may be removed for trial to some county where the cause above stated does not exist, and request that the removal may be made to the county of Cole, in this State. I further state, that my present application is not made for the purpose of vexation or delay, but in truth for the reasons therein stated.

STATE OF MISSOURI, *St. Charles county:*

In St. Charles circuit court, spring term, A. D. 1838.

I, James Barry, do swear, that the statements made in the foregoing petition by me signed, are true. Subscribed and sworn to in open court, April 2d, 1838.

JAMES BARRY.

LUDWELL E. POWELL, *Clerk.*
By BENJ. EMMONS, Jr., *D. C.*

And afterwards, at the same term of the court aforesaid, and on the second day thereof, it being the 3d day of April, A. D. 1838, the following proceeding was had in said cause, to wit:

HAMILTON R. GAMBLE
vs.
JAMES BARRY.
} Ejectment.—Plea filed.

And said plea is in words and figures following, to wit:

"And the said James Barry, by Geyer his attorney, comes and defends the force and injury, when, &c., and says he is not guilty of the said trespasses and ejectments, or any of them above alleged, in manner and form as the plaintiff hath above thereof complained, and of this he puts himself upon the country, &c.

GEYER, *for defendant.*"

And on the third day of the term of said court, it being the 4th day of April, A. D. 1838, in the record and proceeding of said court on that day, is the following, to wit:

HAMILTON R. GAMBLE
vs. } Ejectment.
JAMES BARRY.

On motion of the plaintiff, it is ordered, that Charles De Ward, county surveyor of St. Louis county, make a survey of the premises in question, and return three plats thereof, on which shall be shown the lines and boundaries as claimed by each of said parties; and also, as shall seem right to said surveyor.

SAME
vs.
SAME.

Now, at this day comes said defendant, by his attorney, and the petition and affidavit heretofore filed for a change of venue in this cause, and the reason therein set forth, being satisfactory, it is ordered, that the venue be changed to the county of Lincoln, and the clerk of this court is hereby directed to make out and transmit to the clerk of the circuit court for said county of Lincoln, a complete transcript of the record and proceedings in the cause, together with all the original papers appertaining to, and filed in the same.

STATE OF MISSOURI, *county of St. Charles:*

I, Ludwell E. Powell, clerk of the circuit court of St. Charles county, certify the foregoing to be a full and true transcript of the record and proceedings of said court, in the case of Hamilton R. Gamble vs. James Barry, as the same remains of record in my office.

Given under my hand and seal of said circuit court at office in St. Charles, this first day of August, eighteen hundred and thirty-eight.

LUDWELL E. POWELL, *Clerk.*"

And afterwards, to wit, at a circuit [court] begun and held at the court-house, in the town of Troy, on the 7th day of August, 1838, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

"HAMILTON R. GAMBLE
vs. } Trespass and ejectment.
JAMES BARRY.

Now, at this day, comes the defendant and files his petition and affidavit for change of venue." Which petition and affidavit for change of venue are in the words and figures following, to wit:

"STATE OF MISSOURI, *Lincoln county:*

In Lincoln circuit court, summer term, A. D. 1838.

HAMILTON R. GAMBLE, plaintiff,
vs. } Action of ejectment.
JAMES BARRY, defendant.

I, James Barry, do state that, in this cause, the plaintiff has an undue influence over the mind of the judge of this court; and that, on that ac-

count, I have good reason to believe that I cannot obtain a fair and impartial trial in this court. I therefore pray that a change of venue may be awarded in this cause to some county where the said cause of objection does not exist. I further state that I was not personally present when the order changing the venue to this county was made; but that I confidently believed at the time that my request would have been granted to have it removed to Cole county or Franklin county, or to some convenient county on the south side of the Missouri river, and, therefore, took no steps to guard against its being removed to another part of the same circuit, which I certainly would have done if I had anticipated or expected a refusal to have it moved out of this circuit.

STATE OF MISSOURI, *county of Lincoln:*

I, James Barry, defendant in this cause, do swear that the statements made in the foregoing petition are true; and I do allędge that I have just cause to believe that I cannot receive a fair trial in this court on account of the causes allędged in said petition.

JAMES BARRY.

Subscribed and sworn to in open court this 7th day of August, 1838.

F. PARKER, *Clerk.*"

And afterwards, at the court last aforesaid, to wit, on Wednesday the 2d day of said term, and the 8th of said month, the following proceedings were had in said cause, entered of record in said court in words and figures following, to wit:

"HAMILTON R. GAMBLE
vs.
JAMES BARRY. } Trespass and ejectment.

Now, at this day, comes the defendant, by his counsel, and files his petition and affidavit for a change of venue; which petition is overruled by the court; and thereupon this cause is continued till the next term.

CAMPBELL, *for deft.*"

And afterwards, to wit, at a circuit court, begun and held at the court-house, in the town of Troy, in and for the county of Lincoln, on the 5th day of November, 1838, to wit, on Tuesday, the 6th day of said month, and the second of said term, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

"HAMILTON R. GAMBLE
vs.
JAMES BARRY. } In ejectment.

Luke E. Lawless, who claims title to a part of the premises mentioned in the plaintiff's declaration, by his attorney, files his motion, supported by the affidavit of James Barry, the defendant, for a change of venue in this cause; which motion is overruled by the court.

BATES, *for plt.*
CAMPBELL, *for deft.*"

Which motion and affidavit are in the words and figures following, to wit:

Circuit court, county of Lincoln, State of Missouri.

HAMILTON R. GAMBLE
vs. } Ejectment.
JAMES BARRY.

Luke Edward Lawless maketh oath and saith, that he is entitled to fifty-six arpens, French measure, part and parcel of the tract of eight hundred arpens, on which the defendant resides, and which he claims the possession of under a sheriff's sale, to him made thereof, as the estate of James Mackay, deceased, upon judgment and execution against the executors of said Mackay. And further saith, that he has just cause to believe that a fair trial cannot be had in said case because of the prejudice affecting the judgment of the judge of the said circuit court of the county of Lincoln, and therefore prays that the venue in said cause be changed, and said cause sent for trial to some other court of the State where the cause herein complained of does not exist.

L. E. LAWLESS.

Sworn to and subscribed before me, at office, in the city of St. Louis, this thirty-first day of October, eighteen hundred and thirty-eight.

[L. S.] In testimony whereof I have hereunto set my hand and affixed the seal of said court the day last aforesaid.

JNO. RULAND,
Clerk St. Louis circuit court.

H. R. GAMBLE, pltf.,
vs. }
JAMES BARRY, deft.

In this cause Luke Lawless, a party interested in the land sued for, prays to be admitted as a co-defendant to this action; and also prays that his cause may be removed, by change of venue, to some other county not in this circuit, because the judge of this circuit is prejudiced against him.

WM. M. CAMPBELL,
Atto. for pltf.

STATE OF MISSOURI, *St. Charles county, ss:*

I, James Barry, do swear, that I claim the tract of land on which I reside, in the following manner, viz: seven hundred and forty-four arpens I claim in my own right, and fifty-six arpens I hold possession of by the license and permission of Luke E. Lawless, the interest of said Lawless being an undivided interest, and I holding the same under him, and to which fifty-six arpens I set up no claim except what I derive from the authority granted to me, to hold possession thereof, under and by said Lawless. The said tract is the same now sued for in this court, by Hamilton R. Gamble, as plaintiff.

JAMES BARRY.

Subscribed and sworn to, in open court, Nov. 6th, 1838.

F. PARKER, *Clerk.*

And afterwards, to wit, on the same day and year last aforesaid, the following proceedings were had, and entered of record in said cause, to wit:

HAMILTON R. GAMBLE
vs. } In ejectment.
JAMES BARRY.

And now, at this day, come the parties aforesaid, and before the court make the following agreement, and ask that the same may be entered on the record, to wit:

"It is agreed that in this case the title of the plaintiff to the land in the declaration mentioned is the title under the patent issued to Baptiste La Fleur, or his legal representatives, and that the title of the defendant to the same premises is the title under the confirmation to James Mackay's representatives, and that if the patent should be adjudged to be a better title than the confirmation, then the plaintiff shall recover said land; but if the confirmation be the better title, then the defendant shall have judgment—the right of either party to an appeal or writ of error being saved. It is further agreed, that if the judgment in the above case should be in favor of the plaintiff, no execution to disturb the defendant's possession shall issue during the pending of the suit in any higher court. And it is also admitted, that, at the commencement of the suit, the defendant was in possession of the premises, in the declaration mentioned.

And thereupon this cause is continued till the next term.

BATES, *for plaintiff.*
CAMPBELL, *for defendant.*"

And afterwards, to wit, at a circuit court, begun and held at the court house, in the town of Troy, in and for said county of Lincoln, on Monday, the 29th day of April, 1839, to wit: On Tuesday, the 30th day of said month, and the second of said term, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

HAMILTON R. GAMBLE
vs. } In ejectment.
JAMES BARRY.

Now at this day come the parties aforesaid, by their attorneys, and the defendant files a motion and affidavit for a continuance of this cause; and the parties consent that the plaintiff may take the depositions of Mary P. Leduc and Joseph C. Brown, to be read in evidence in the cause, without any objection to be made by the defendant, on account of the distance said witnesses may be, or reside, from the place of trial. Thereupon said motion is granted, and this cause continued till the next term, at the costs of said defendant.

BATES, *for plaintiff.*
CAMPBELL, *for defendant.*

Which motion and affidavit for a continuance, is in the words and figures following, to wit:

STATE OF MISSOURI, *Lincoln county:*

In Lincoln circuit court, spring term, 1839.

HAMILTON R. GAMBLE, plaintiff,
vs.
JAMES BARRY, defendant. } Action of ejectment.

I, James Barry, the above named defendant, do swear, that I am not ready for trial at the present term of this court; that I came here under the full belief that I was ready for trial, and with the expectation and anxious desire to have the cause disposed of at the present term, but since my arrival, upon consultation with my counsel, I find that it will be necessary for me to procure a continuance. Some time ago my attorney furnished me with a written memorandum, directing me to procure a number of pieces of documentary evidence, properly certified, to be used on this trial, and, among others, was a full transcript of the record of the cause of Isabella Mackay and others vs. the United States, in the district and Supreme Courts of the United States, that being the confirmation under which I claim the land in controversy. I showed this memorandum to the surveyor general of the State, and he informed me that he had a printed copy of the decree in that case, printed by authority of Congress, which he would furnish to me; I being entirely ignorant of legal proceedings, and thinking that this was the document which I was directed by my counsel to procure, obtained said printed copy, and brought it along with me; but, since my arrival here, I have been informed that I must have a full record of the judgment and proceedings in that cause, and not merely a copy of the decree; and that, on that account, I cannot go safely to trial now. I have been recently informed, and believe the same to be true, that, at an early period, and long before the issuing of the patent by the United States for the New Madrid claim, under which the present plaintiff claims title, the attorney of the representatives of James Mackay filed, in the office of the commissioner general of the land office, at Washington city, a caveat against the claim under which plaintiff claims, as notice to the Government and the claimants, and that he also filed a similar caveat in the office of the surveyor general. This, I am advised, it will be proper for me to show in evidence. It is only within a very short time past that I have been informed of the existence of these papers, or that it would be proper for me to obtain them as evidence in this suit, and I have not had time to obtain copies since I was properly avised upon that subject. I expect to obtain the necessary documents and evidence to enable me to go safely into trial by the next term of this court; and do not now ask for a continuance for the purpose of vexation or delay, but to enable me to substantiate what I consider a most just defence against this action of plaintiff.

JAMES BARRY.

Sworn to, before me, this 30th of April, 1839.

FRANCIS PARKER, *Clerk.*
Per T. G. HUTT, *D. C.*

And afterwards, to wit, at a circuit court begun and held at the court house, in the town of Troy, on Monday, the 2nd day of September, 1839, in and for said county of Lincoln, to wit, on Tuesday, the second day of said term, and the 3rd day of said month, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

"HAMILTON R. GAMBLE
vs. } Trespass and ejectment.
JAMES BARRY.

On motion and affidavit of the defendant, by his attorney, this cause is continued till the next term of this court, at the costs of the defendant.

BATES, *for plaintiff.*
CAMPBELL & LAWLESS, *for defendant.*"

Which motion and affidavit are in the words and figures following, to wit:

HAMILTON R. GAMBLE
vs.
JAMES BARRY.

James Barry, said defendant, maketh oath and saith, that since the last continuance of this cause an application was made in due form to the commissioner of the general land office of the United States for a patent to the legal representatives of James Mackay, deceased, for the tract of land containing eight hundred arpens, in which tract is included the land in dispute in said cause; that by letter, dated 5th August, 1839, addressed by said commissioner to Luke E. Lawless, the attorney of this deponent, said commissioner states that the papers in the case of said application for a patent have been submitted to the Secretary of the Treasury of the United States for the opinion of the Attorney General of the United States, and that he, the said commissioner, will, on receipt of instructions from the secretary on the subject, forthwith advise the said Luke E. Lawless of any further proceedings in the premises.

This deponent further saith, that no other communication has yet been made to this deponent, or to his attorney, or to any other person, as this deponent is informed and believes, on the subject of said patent, by said commissioner; and this deponent believes that none will be made before the said cause comes on for trial, but that, on or before the first day of the next term of this court, a final disposition will be made by the said commissioner, or by the Executive of the United States, of the above subject. And this deponent saith, that he is informed by his counsel that it would [be] expedient and necessary for his defence that said patent should be issued to said James Mackay, or his legal representatives, previous to the trial of said action.

And this deponent further saith, that the transcript from the record of the Supreme Court of the United States of the decree of confirmation made by that court of the title of said James Mackay and his legal representatives to the said tract of eight hundred arpens, has not yet been re-

ceived by this deponent, or his attorney; but this deponent believes that the same will be received on or before the first day of the next term.

J. BARRY.

Subscribed and sworn to, in open court, Sept. 3rd, 1839.

F. PARKER, *Clerk.*

And afterwards, to wit, at a circuit court begun and held at the court house, in the town of Troy, in and for said county of Lincoln, on Monday, the second day of December, 1839, to wit, on Tuesday, the third day of said month, and the second of said term, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

HAMILTON R. GAMBLE
vs.
JAMES BARRY. } In ejectment.

On motion of the defendant, and by agreement of the parties, this cause is continued till the next term, at the cost of the defendant.

BATES, *for plaintiff.*
LAWLESS, *for defendant.*

And afterwards, to wit, at a circuit court begun and held at the court house, in the town of Troy, on the 4th day of May, 1840, in and for said county of Lincoln, to wit, on Saturday, the 6th day of said term, and the ninth of said month, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

"HAMILTON R. GAMBLE
vs.
JAMES BARRY. } In ejectment.

On motion, and by consent of the parties, this cause is continued till the next term.

BATES, *for plaintiff.*
CAMPBELL, *for defendant.*"

And afterwards, to wit, at a circuit court begun and held at the court house, in the town of Troy, in and for said county of Lincoln, on Monday, the 31st day of August, 1840, to wit, on Wednesday, the third day of said term, and the second day of September, 1840, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

HAMILTON R. GAMBLE,
vs.
JAMES BARRY. } Ejectment.

Now, at this day, come the parties aforesaid, the plaintiff in his own proper person, and the defendant by his counsel, and thereupon come a jury, to wit: Silas M. Davis, Isaac Collier, James M. Zimmerman, Semor Davis, William Miller, Wade H. Munday, John Snethen, David

W. McFarland, Elisha Perkins, Joseph W. Sitton, Morgan Wright, and Alexander Martin, twelve good and lawful men, who, being duly elected, tried, and sworn, to try the issue joined between the parties, upon their oaths aforesaid say, that the defendant is guilty of the trespass and ejectment, in manner and form as the plaintiff hath complained against him in his declaration, and assess the damages of the said plaintiff, by him sustained by reason thereof, to the sum of nineteen hundred and fifty-four dollars; and they assess the monthly value of the rents and profits of the premises, in the declaration mentioned, to the sum of forty-seven dollars; therefore, it is considered, that the said plaintiff recover of the said defendant, the premises in the declaration mentioned, being a tract of land situated in the county of St. Louis aforesaid, in township forty-five north, of the base line, in ranges six and seven east of the fifth principal meridian, being United States survey number two thousand six hundred and fourteen, bounded on the south, in part, by land surveyed for M. L. C. Papin; on the east, by lands of the common fields of the Grand Prarie; on the north, in part, by a tract of land granted to Auguste Chouteau; the said premises being the same located under a New Madrid certificate, issued to Baptiste Lafleur, or his legal representatives, containing six hundred and forty acres; and also the damages aforesaid, in form aforesaid by the jury assessed; and also the accruing rents and profits, at the rate of seven dollars a month from this date, until the possession of the premises is delivered to the plaintiff, together with the costs and charges by him, the said plaintiff, about his suit in this behalf expended; and that he have a writ of possession for the premises in the declaration mentioned, and for the damages and accruing rents, profits, and costs, according to the statute in such cases made and provided.

CAMPBELL & WELLS,
For defendant."

And afterwards, at the same court last aforesaid, to wit, on Thursday, the fourth day of the term, and the third day of September, 1840, the following proceedings were had in said cause, and entered of record in said court, in words and figures following, to wit:

"HAMILTON R. GAMBLE,
vs.
JAMES BARRY. } In ejectment.

This day comes the defendant, by his attorney, and files his motion for a new trial, which is overruled by the court; to which opinion and decision of the court, in overruling said motion, the defendant, by his attorney, excepts, and tenders his bill of exceptions, which is allowed and signed by the court.

CAMPBELL & WELLS,
For defendant."

Which bill of exceptions is in the words and figures following, to wit:

"HAMILTON R. GAMBLE, plaintiff,
vs. } Action of ejectment.
JAMES BARRY, defendant.

In Lincoln circuit court, August term, 1840.

Be it remembered that, on this second day of September, 1840, this cause came on to be tried, and after the jury were sworn, the plaintiff offered in evidence the following evidence, viz:

1st. An agreement entered on record between the plaintiff and defendant, as will appear by the copy of the record.

(A) 2. A patent from the United States to the representatives of Baptiste Lafleur, as follows:

The United States of America to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in [the] General Land Office, a certificate, numbered three hundred and sixty-nine, of the recorder of land titles at St. Louis, Missouri, whereby it appears, that in pursuance of the act of *of* Congress, approved on the 17th day of February, one thousand eight hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and of the several acts of Congress amendatory and explanatory of the same, Baptiste Lafleur, or his legal representatives, have located a tract of land, containing six hundred and forty acres, bounded and described as follows, to wit: beginning at the northeast corner of Papin's survey of three thousand two hundred arpens; thence, with Gratiott's line, south eighty-three degrees east, at thirty-two chains, Gratiott's northeast corner, seventy-seven chains to a post on the line of the common fields, (six chains and fifty-two links northwardly of the southwest corner thereof,) from which a cherry tree, three inches in diameter, bears south forty-three degrees thirty minutes west, distant ninety-seven links, and a cherry tree, five inches in diameter, bears south eight degrees west, distant one hundred and eighty-nine links; thence north twenty-nine degrees thirty minutes east, with the line of the common fields, ten inches and twenty-five links, to a stone; thence north sixty degrees thirty minutes west, one hundred and fifty-eight chains and sixteen links, to a post, from which a R. oak, three inches in diameter, bears south fifty-six degrees west, distant one hundred and fifty-nine links, and a hickory, three inches in diameter, bears north sixty-seven degrees east, distant one hundred and twenty-six links; thence south twenty-nine degrees thirty minutes west, seventy three chains, to a post in a mound, on the line of the said survey for M. L. C. Papin, twenty-nine chains and seventy-nine links east of the sectional corner; thence south eighty-three degrees east, ninety-three chains, with Papin's line, to the beginning, being survey number two thousand six hundred and fourteen, and being in township forty-five north of the base line, of ranges six and seven east of the fifth principal meridian.

There is therefore, granted by the United States, unto the said Baptiste Lafleur, or his legal representatives, and to his or their heirs, the

tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said Baptiste Lafleur, or his legal representatives, and to his or their heirs and assigns forever.

In testimony whereof, I, John Quincy Adams, President of the United States, have caused these letters to be made patent, and the (SEAL.) seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the thirteenth day of *day of* June, in the year of our Lord one thousand eight hundred and twenty-seven, and of the independence of the United States the fifty-first.

By the President: J. Q. ADAMS.

G. W. GRAHAM,

Commissioner of the General Land Office.

Recorded vol. 5, pages 417 and 418.

3. Plaintiff introduced Henry Walton, a witness, who testified that [he] knows the premises in controversy, and thinks that in the years 1828 and 1839, the premises occupied by the defendant were worth $1,000 00 per year, and since that time about $800 00 per year; and that he would estimate the present and future value of said premises at $66 00 per month. The property is situated about six miles from St. Louis city, on the main St. Charles road, and at the forks of the road; there is on it under cultivation above 100 acres, and a pasture of probably 50 acres under fence. It is valuable as a tavern stand, but principally on account of the farm; there has been made upon it some improvements, by breaking up and fencing land every year for many years past; fencing is costly at that place; does not think that there has been much improvement by building for the last two years; a bar room has been erected on the land during the past year; the fencing on the farm has decayed considerably, and was repaired by defendant last spring. Plaintiff here closed his testimony. Defendant then offered and read in evidence the following papers, viz: 1st, a copy of the record of the confirmation of the land in controversy, to the widow and heirs of James Mackay, deceased, as follows:

UNITED STATES, *sc.*

At a Supreme Court of the United States, begun and held at the city of Washington, in the District of Columbia, on the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-six, and in the year of the independence of the said United States the sixtieth, were present, the honorable Joseph Story, senior associate justice, Smith Thompson, the honorable John McLean, associate; Henry Baldwin, and James M. Wayne, justices; Alexander Hunter, esquire, marshal; William Thomas Carroll, clerk. Among others, was the following transcript of a record, to wit:

JAMES MACKAY'S widow and heirs, appellants,
versus
THE UNITED STATES.

On appeal from the district court U. S., for the Missouri district.

United States of America to the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in August next, pursuant to an appeal filed in the clerk's office of the district court of the United States, for the district of Missouri, wherein Isabella Mackay, widow, and John Zenon Mackay, Reuben S. Coleman, and Lucy Eliza, his wife, Louis Guion and Catharine Mary, his wife, George A. Mackay, James B. Mackay, Jane J. Mackay, and Amelia A. Mackay, minors, by their mother and next friend, the said Isabella Mackay, heirs of James Mackay, deceased, are appellants, and the United States is appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Marshall, chief justice of the Supreme Court of the United States, at the city of Washington, this 17th day of January, A. D. 1831.

J. MARSHALL, *Ch. Just. U. S.*

Washington City, Jan. 18, 1831. Served this citation on Mr. Wirt, by leaving with him a true copy, and showing him the original at the same time.

THOMAS WOODWARD.

Sworn to in open court.

WM. THOS. CARROLL, *C. S. C. U. S.*

The petition of Isabella Mackay, widow of James Mackay, deceased, John Zenon Mackay, Reuben S. Coleman, and Lucy Eliza his wife, Louis Guion, and Catharine Mary his wife, George Anthony Mackay, James Bennett Mackay, Jane Julia, and Amelia Anne Mackay, heirs of said James Mackay, deceased, minors, by their mother and next friend, said Isabella Mackay, to the honorable the chief justice of the United States, respectfully sheweth: that at the session of the district court of the United States for the district of Missouri, held at St. Louis, in February of the year 1830, last past, a final decree was pronounced by said court in favor of the United States, in the cause of the widow and heirs of James Mackay, deceased, petitioners, vs. the United States; that, on the hearing of said cause, and after said decree was pronounced, it was distinctly understood, and the intention was expressed, by the counsel for your petitioners, that an appeal would be taken by them to the Supreme Court of the United States; that immediately after said decree was pronounced, the said district court adjourned sine die, and since that time has ceased to exist, at least for the purpose of making final decisions, by virtue of that provision in the act of Congress of the 24th May, 1828, which declares,

that the act of 26th May, 1824, shall be continued in force until the 26th May, 1830, and no longer; that your petitioners, against whom the decree aforesaid was pronounced, availing themselves of that provision in the act of 26th May, 1824, which declares that, in all cases, the party against whom the decree may be finally given shall be entitled to an appeal within one year from the time of its rendition to the Supreme Court of the United States, have applied to the clerk of the said district court of Missouri, under the act of 1824, and have obtained a transcript of the record in said cause, and have applied to the judge of said district court for a citation, to be directed to the proper officer of the United States, and have tendered the necessary appeal bond, and have prayed that said judge should allow the appeal, and should do such other judicial act or acts as might be necessary to enable the said petitioners to avail themselves of the right of appeal so to them given by the act of Congress of 1824, continued by the act of 1828, aforesaid. Your petitioners further respectfully showeth, that said judge having taken said application into consideration, has decided, that he has ceased to have any authority under the act of 1824, or under any other act of Congress continuing or amending the same; and therefore, has declined allowing the appeal, or issuing the citation, prayed for by your petitioners; your petitioners showeth that, in consequence of the above decision of the said district judge, they will be deprived of their right of appeal, unless the honorable the Supreme Court, or a judge thereof, shall interpose to relieve them. Wherefore, your petitioners respectfully pray, that a citation be issued in due form in the above cause, directed to the proper officer, requiring him to appear and show cause, in the honorable the Supreme Court of the United States, at the present term thereof, why said decree should not be reversed; and that the appeal bond ready to be tendered by your petitioners may be approved of, if found sufficient; and that such other order may be made, as to your honor may seem proper in the premises; and your petitioners will ever pray, &c.

L. E. LAWLESS,
Attorney for plaintiffs.

Appeal allowed.

J. MARSHALL,
Chief Justice of the U. S.

Know all men by these presents, that we, Marie P. Leduc and Luke E. Lawless, are held and firmly bound unto the United States, in the full and just sum of two hundred dollars, to be paid to the said United States certain attorney, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this seventeenth day of January, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, lately at a district court of the United States, for the district of Missouri, in a suit depending in said court, wherein James Mackay's heirs were petitioners, and the United States was defendant, a final decree was passed against the said Mackay's heirs; and the said Mackay's

heirs having entered an appeal from the said decree of the said district court, to the Supreme Court of the United States, and obtained a citation directed to the said United States, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of August next; now, the condition of the above obligation is such, that if the said James Mackay's heirs shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

M. P. LEDUC, [L. S.]
L. E. LAWLESS, [L. S.]

Sealed and delivered in the presence of—
WM. THOS. CARROLL.

Approved by J. MARSHALL,
Chief Justice of the U. S.

Know all men by these presents, that I, Barry, of the county of St. Louis, am held and firmly bound unto the United States in the sum of one hundred dollars, to the payment of which I bind myself, my heirs, executors, and administrators. The condition of the above obligation is such, that whereas Isabella Mackay, widow of James Mackay, deceased, together with John Zenon Mackay and others, heirs of said James Mackay, have appealed from a decree of the United States court for the Missouri district, pronounced against them on their petition for the confirmation of a certain grant of eight hundred arpents of land situate in the county of St. Louis, State of Missouri, alledged to have been made by the Spanish Government of Upper Louisiana to said James Mackay, deceased, on the 14th September, 1799. Now, if the said Isabella Mackay, John Zenon Mackay, and the other appellants, shall pay, or cause to be paid, all costs which shall accrue on the prosecution of said appeal for which they shall become bound by order or decree of the Supreme Court of the United States, then this obligation to be void, otherwise to be and remain in full force.

Witness my hand and seal at St. Louis, this eleventh day of November, 1830.

JAMES BARRY, [L. S.]

Signed in presence of Jo. Gamble, clerk of the late court of the U. S. for the Missouri district, &c.

UNITED STATES OF AMERICA, *Missouri district, sct:*

Be it remembered that heretofore, to wit, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Isabella Mackay, widow, and the children and heirs of James Mackay, deceased, by their solicitors, filed in the office of the clerk of the United States court for the Missouri district, under authority of an act of Congress entitled "An act enabling the claimants to lands within the State of Missouri and the Territory of Missouri to institute proceedings

to try the validity of their claims," their petition praying for the confirmation of eight hundred arpents of land, as the same is described in said petition; which said petition is in the words and figures following, to wit:

To the judge of the district court of the United States for the State and district of Missouri:

Respectfully show Isabella Mackay, widow of James Mackay, deceased, John Zenon Mackay, Reuben S. Coleman, and Lucy Eliza his wife, Louis Guion, and Catharine Mary his wife, George Anthony Mackay, James Bennett Mackay, Julia Jane and Amelia Anne Mackay, minors, by their mother and next friend, Isabella Mackay, that on the thirteenth day of September, one thousand seven hundred and ninety-nine, James Mackay, deceased, late of St. Louis, presented his petition to Don Carlos D. Delassus, the lieutenant governor of the province of Upper Louisiana; by which petition the said James Mackay submitted to said lieutenant governor that he, said James Mackay, then commandant of the post of St. Andre, on the Missouri, was established at the village of St. Andre aforesaid, but that having the intention to establish an habitation in the neighborhood of Mr. Papin, between St. Louis and the river des Peres, he, said Mackay, prayed the said lieutenant governor to grant to said James Mackay and his heirs eight hundred arpents of land in superfices, bounded on the south by the lands of Mr. Papin and of Madame Chouteau; on the east by the common field lands of Kercerea, l'Anglois Taillon, and others, at the grand Marais; on the west by James McDaniel; and on the north and northeast by the land of Mr. Chouteau and the domain of the King. Your petitioners further show that, on the fourteenth day of September aforesaid, in the year aforesaid, 1799, the said lieutenant governor did, in compliance with the above-stated petition, make his order or decree, whereby he ordered the surveyor of said province to put said James Mackay into possession of the land solicited and demanded in said petition; and that said surveyor should survey same, and make a plat of certificate and survey thereof, and deliver same to the petitioner, James Mackay, in order that said petitioner might thereupon obtain the formal title from the intendant general; all which will more fully appear by said petition and decree, now ready to be produced to this court. Your petitioners show that said James Mackay did, by virtue of said decree, take possession of said tract, and exercise acts of ownership over the same from the year one thousand eight hundred, or sooner; that is to say, immediately subsequent to said decree, until the death of said James Mackay, which took place in the year 1822; that said James Mackay was, from the year 1799, during the time that the Spanish Government continued, the undisturbed and acknowledged owner of said tract, and continued so until the year 1817 when certain persons, taking advantage of the non-confirmation of said tract, wrongfully located thereon a New Madrid certificate, and set up their claim, under pretext of said location, to a part of said tract; that neither the said concession nor claim thereon have been pre-

sented to, or filed with, the recorder or board of commissioners heretofore created in Upper Louisiana for the adjudication of land claims; the said concession having been sent to New Orleans by said James Mackay, and not returned in time to enable him to file the same. Your petitioner, Isabella Mackay, as widow, and your other petitioners, as heirs and children of said James Mackay, pray that the title of said James Mackay may be inquired into as above set out; and that, inasmuch as same would have been confirmed by the Government under which it originated, if the same province of Upper Louisiana had not been transferred to the United States, your petitioners pray that the title of said James Mackay, deceased, and his legal representatives, be confirmed to said tract of eight hundred arpents, as same are specially located and described in said petition and decree, and your petitioners will pray.

G. F. STROTHER,
L. E. LAWLESS,
Solic's for pltff.

And thereupon the clerk of the said court issued a citation to the attorney of the United States for the Missouri district, in the words following, to wit:

Missouri district, sct:

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded to notify and cite the attorney of the United States for the Missouri district, that he be and appear before the court of the United States for the Missouri district, on the fourth Monday of June next, then and there to answer the petition of Isabella Mackay, widow of James Mackay, deceased, John Zenon Mackay, Reuben S. Coleman, and Lucy Eliza his wife, Louis Guion, and Catharine Mary his wife, George Anthony Mackay, James Bennett Mackay, Jane Julia and Amelia Anne Mackay, minors, by their next friend said Isabella Mackay, who pray the confirmation of eight hundred arpens of land, and make defence, if any he has, or knows of anything to say, why the same should not be confirmed accordingly; hereof fail not, and have you then there this writ.

Witness the honorable James H. Peck, esquire, judge of the United States court for the Missouri district, the twenty-fifth day of May, 1829.

Issued at office in St. Louis, under my private seal, there being no public seal provided, the day and year last aforesaid.

ISAAC BARTON, *Clerk.*

Which said citation was duly returned by the said marshal, with his return thereon endorsed as follows, to wit:

Executed this citation on Beverly Allen, the United States district attorney for the Missouri district, June 15th, 1829, at St. Louis, and gave him a copy of the petition in this behalf.

JOHN SIMONDS, Jr., *Marshall.*
By D. E. CUYLER, *Deputy.*

And afterwards, to wit, at the June session of said court, in the year eighteen hundred and twenty-nine, comes the attorney for the United States, and files his answer to said petition; and thereupon, on application of the petitioners, by their solicitor, and with the consent of the said attorney for the United States, this cause is continued. Which answer, as filed by said attorney to the aforesaid petition, is in the words and figures following, to wit:

The answer of Beverly Allen, attorney of the United States, to the petition of the heirs of James Mackay, praying the confimation of a tract of land of 800 arpents.

This respondent, for answer on behalf of the United States of America, reserving to himself, and to the said United States, now, and at all times hereafter, all manner of advantage of exception to the manifold errors, imperfections, and uncertainties in the said petition contained, for answer thereto, or to so much thereof as this respondent deems it necessary and material for him to answer, answering, says: that he is wholly uninformed and ignorant of all and every the matters and things in said petition contained, and therefore he does not admit the same, or any of them, to be true, but prays the court that the said petitioners may be held and required to prove and substantiate the material allegations in said petition contained; and all such other matters and things, the existence whereof may be deemed essential and necessary for the confirmation of the said claim. And the respondent, &c.

B. ALLEN,
Att'y for the U. S. D. for Missouri.

This cause was continued until the January session of said court, in the year eighteen hundred and thirty, when the following proceedings were had.

ISABELLA MACKAY, widow, and the heirs of James Mackay, deceased, vs. UNITED STATES. } Friday, January 15th, 1830.

Now, at this day, comes, as well the said petitioners, by their solicitors, as the attorney for the United States, and this cause coming on to be heard upon the petition, answer, and proofs, the petition of Isabella Mackay, widow, and the heirs as aforesaid, in substance states, that on the thirteenth day of September, in the year seventeen hundred and ninety-nine, James Mackay, deceased, late of St. Louis, presented his petition to Don Carlos Dehault Delassus, then lieutenant governor of Upper Louisiana, by which petition, the said James Mackay submitted to said lieutenant governor, that he, said Mackay, then commandant of the post of St. Andre, was established at the village of St. Andre; that having the intention to establish an habitation in the neighborhood of Mr. Papin, between St. Louis and the river des Peres, said Mackay prayed said lieutenant governor to grant to him and his heirs, a tract of eight hundred arpents of land, French superficial measure, bounded on

the south by the lands of Mr. Papin and of Madame Chouteau, on the east by the common field lands of Kercereau, l'Anglois Taillon, and others, at the Grand Marais; on the west by James McDaniel, and on the north and northeast by the land of Mr. Chouteau and the domain of the King; that on the fourteenth day of September, in the year aforesaid, the said lieutenant governor made his order or decree, whereby he ordered the surveyor of said province to put the said Mackay into possession of the land solicited, and demanded in said petition, that said surveyor should survey the same, and make a plat and certificate of survey thereof, and deliver the same to said petitioner; that said Mackay, immediately after said decree, took possession of said tract, and exercised ownership over the same, nntil the death of said Mackay, in the year eighteen hundred and twenty-two; that said Mackay was, from the year seventeen hundred and ninety-nine, during the continuance of the Spanish government, the undisturbed and acknowledged owner of the said tract, and continued so until the year eighteen hundred and seventeen, when certain persons located thereon a New Madrid certificate, and under said location set up their claim to a part of said tract.

The petition further states, that neither the concession, nor claim thereon, has been presented to, or filed with, the recorder or board of commissioners, created for the adjudication of land titles in Upper Louisiana; that said claim was sent by said Mackay to New Orleans, and was not returned in time to enable him to file the same.

The petition then prays, that said title may be inquired into and confirmed, as located in said petition and decree.

The attorney for the United States for answer, says, that he is wholly ignorant and uninformed of the matters and things in said petition contained; that he neither admits nor denies them; but prays that said petitioners may be held and required to prove the material allegations in said petition contained, and all such other matters and things as may be deemed essential to the confirmation of said claim.

And the evidence in this cause being that which is contained in a bill of exceptions, taken by the solicitors for the said petitioners, and ordered to be made a part of the record in this cause. Which said bill of exceptions, as signed and sealed by the court, and ordered to be made a part of the record, is in the words and figures following, to wit:

Be it remembered, that at the trial of this cause, the petitioners, by their solicitors, produced to the court an alleged concession from Charles Dehault Delassus, then lieutenant governor of Upper Louisiana, of the date of the fourteenth day of September, seventeen hundred and ninety-nine, for the premises claimed in the petition of the said James Mackay, deceased, upon which the said alleged concession appeared to have been made, of the thirteenth day of the same month; which said petition, as transmitted to the court by Luke E. Lawless, a witness sworn in this cause, is as follows, to wit:

To Charles Dehault Delassus, lieutenant colonel attached to the first regiment of Louisiana, and commander-in-chief of Upper Louisiana.

James Mackay, commandant of St. Andre, of Missouri, being estab-

lished at the said village of St. Andre, on the bank of the Missouri, but having the intention of establishing a habitation in the neighborhood of Mr. Papin, between St. Louis and the river des Peres, he prays you to grant him, in entire property, 800 arpents of land, in superfices, bounded on the south by land of Mr. Papin and Madame (widow) Chouteau; on the east by the lands of the common field of Kiercereau, l'Anglois Taillon, and others, at the Great Marais; on the west by James McDaniel; and on the north and northeast by the land of Mr. Chouteau and the domain of the King. Knowing the zeal and fidelity of the suppliant in the service, he hopes this grace of your justice.

JAMES MACKAY.

St. Louis, 13*th September*, 1799.

And which said concession is also translated, by the said witness, in the following words, to wit:

St. Louis, of Illinois, 14*th Sept.*, 1799.

The surveyor, Don Antonio Soulard, will put the interested party in possession of the tract of land which he solicits by his memorial; which having done, he shall form a plat, delivering it to this party, and a certificate, in order that it may serve to obtain the concession and title in form from the senior intendent general of these provinces, to whom, by order of his majesty, belongs particularly the distributing and granting of every class of vacant lands.

CHARLES DEHAULT DELASSUS.

Which said petition was in the French language, and the said concession in the Spanish language—both being upon the same half sheet of paper.

Be it further remembered, that the said plaintiffs, by their said solicitor, Luke E. Lawless, introduced Mary P. Leduc as a witness, who proved, that he was the private secretary of Lieutenant Governor Delassus, at the time at which the said concession bears date, and that he was well acquainted with the handwriting of the said lieutenant governor, and knows the signature of the said Charles Dehault Delassus, as affixed to the said concession, to be his genuine signature; that the handwriting in the said concession is that of said Antoine Soulard, who was the surveyor of the province of Upper Louisiana at the date of the said concession; that the handwriting of the said petition was that of said James Mackay; with the handwriting of both which last mentioned persons the said witness was also well acquainted.

Said witness further stated, in answer to interrogatories put by the court, that the said land, in the said petition and concession mentioned, was situated immediately south of the tract claimed by Auguste Chouteau, deceased, the title to which had been adjudicated against by this court during the present term, and that no other lands intervened between the lands of Watkins, which bounded the said last mentioned tract on the north, and the said lands conceded to the said James by the said concession, but the said tract of the said Auguste; and that the land of said

James, as conceded, was bounded on the east by the common fields, in like manner as was the tract of the said Auguste; and that the said concession of the said James was bounded on the south and west as stated in the petition.

And the court having called for the petition and concession in the case of the said Auguste, which had been determined as mentioned, and upon which the claim in that case was founded, and it appearing by the said petition and concession, that they bore date of the 5th January, 1800, and that the survey executed in pursuance of said concession, as would appear by the report of the surveyor, the said Antoine Soulard, was made on the 5th day of March, eighteen hundred and one, and the said Auguste put in possession of the said tract at the time of the said survey, which report of the said surveyor, as translated in evidence, is in the words and figures following, to wit:

I, Anthony Soulard, principal deputy surveyor of Upper Louisiana, certify that, on the 5th day of March, present year, (in virtue of the annexed decree of the lieutenant governor and lieutenant colonel of the royal armies, Mr. Charles Dehault Delassus, dated January 5th of last year,) I went on the land of Auguste Chauteau to survey it according to his request, to contain 1,281 arpents in superfices, which admeasurements were made in presence of the proprietor and of the adjacent neighbors, with the perch of Paris, having 18 feet in length, according to the custom adopted in this province of Louisiana, and without regard to the variation of the compass, which is 7° 30' E., as appears in the preceding diagram; which land is situated at about 4 miles N., 56½ W. of this town, and bounded as follows: north, in part, by the lands of John Watkins and Philip Reviere, and vacant lands of the royal domain, south and west by said vacant lands, and east by lands of sundry inhabitants of this town of St. Louis.

In testimony whereof, I give these presents, with the foregoing figurative plan, in which are indicated the dimensions and metes and bounds, both material and artificial, on the periphery of said land. St. Louis, of Illinois, April 10, 1801.

ANTONIO SOULARD, *Agen. Par.*

And it appearing, as well on the diagram which accompanied the report of the surveyor, the said Antoine, as by his certificate, that the southern and western boundaries of the said tract of the said Auguste is bounded by the royal domain; and it having also been proved by the said Mary P. Leduc, in answer to interrogatories propounded by the court, that the report of the said Antoine, of the said survey of the said tract of the said Auguste, was in the handwriting of the said Antoine, as well as the notes upon the said diagram which are here exhibited in open court; and it also further appearing, upon an inspection of a petition which had been made by the said Auguste, and upon an inspection of a decree made by the said lieutenant governor, in compliance with said last mentioned petition, which last mentioned petition was of the date of the 5th of November, 1799; that a water mark, of the year

1799, appeared upon the said paper, which said decree is referred to in the petition of the said Auguste, in which he solicited the concession before mentioned, and upon which the said claim decreed against, as aforesaid, was founded; to all which facts, the court having directed the attention of the solicitors, as those from which suspicion might arise, in relation to the genuineship of the concession upon which the present claim is founded, inasmuch as it was of an earlier date than the concession of the claim to which it refers for its northern boundary.

And thereupon, the solicitors for the petitioners introduced a witness who spoke the French language, but who alledged he could not speak the English language, and prayed that the court would hear the evidence of the said witness in the French language, without offering any translation thereof, which the court declined to do; the said solicitors then introduced another witness, and requested the said last mentioned witness to interpret his questions to the previous witness, who did not speak English; which said last mentioned witness declined to interpret the questions as requested, although he was capable of interpreting them. And thereupon the said solicitors prayed the court to appoint an interpreter for the purpose of translating the testimony of the said witness, which the court, doubting its authority to appoint any such officer, declined to do; to which opinion of the court the said solicitors excepted, and thereupon declared that they would offer no other evidence. The judge of the court presiding in the cause did not speak the French language, which the said solicitor in the cause, Luke E. Lawless, who had been sworn as a witness in the cause, at his own instance, for the purpose of translating the said decree and concession, spoke fluently to the knowledge of the court, and who did not offer to take upon himself the interpretation of the said evidence of the said witness; all which is signed and sealed by the court, and ordered to be made a part of the record.

JAMES H. PECK, [L. S.]

And no other evidence being offered on behalf of either of the parties, and all and singular the premises being seen, and by the court here fully understood; and for that it seems to the court that, by the royal order of Spain, of the twenty-fourth of Auguste, seventeen hundred and seventy, directed to the governor of the province of Louisiana, and his successors in office, the instruction which had been framed by General Alexander O'Riley, of the date of eighteenth of February of the same year, was exclusively to regulate the grant and distribution of the crown lands in Louisiana, so long as the king should not otherwise dispose; and for that the decree of the same king, of the twenty-second day of October, one thousand seven hundred and ninety-eight, which transferred the power to grant, by which, under the said royal order, the said governor had distributed the said lands, did not abrogate the said instruction of the said O'Riley, but left the same in full force; and also introduced the royal regulation of seventeen hundred and fifty-four, and the laws cited therein, as well as the eighty first article for the establish-

ment of the intendants of New Spain; and for that, according to the said instructions, and also according to the regulations made by Morales, the intendant of said province, dated the seventeenth of July, seventeen hundred and ninety-nine, the claim of the said petitioners, derived through the said James Mackay, if the said concession were genuine, is invalid, both at law and in equity; and the act in virtue of which said claim is made was unauthorized by the royal regulation of seventeen hundred and fifty-four, or the laws cited therein, or by the eighty-first article; the validity of the said title and claim of the said petitioners is therefore adjudged and decreed against; and it is further ordered, adjudged, and decreed, that the said Isabella Mackay, widow of the said James Mackay, deceased, John Zenon Mackay, Reuben S. Coleman and Lucy Eliza, his wife, Louis Guion and Catharine Mary, his wife, and the said Isabella Mackay, the next friend of George Anthony Mackay, James Bennett Mackay, Jane Julia and Amelia Anne Mackay, minors, pay all costs occasioned by the prosecution and defence of this suit.

Saturday, January 16*th*, 1830.

ISABELLA MACKAY, widow, and the heirs of James Mackay, deceased,
vs.
UNITED STATES.

After the decree pronounced in this cause, it was ordered by the court that the clerk retain, with the papers on file in this case, the concession upon which the claim is founded, until its further order.

Monday, January 19*th*, 1830.

ISABELLA MACKAY, widow, and the heirs of James Mackay, deceased,
vs.
UNITED STATES.

It is ordered that Isabella Mackay, widow of James Mackay, deceased, John Zenon Mackay, Reuben S. Coleman and Lucy Eliza, his wife, Louis Guion and Catharine Mary, his wife, and the said Isabella Mackay, the next friend of George Anthony Mackay, James Bennett Mackay, Jane Julia, and Amelia Anne Mackay, minors, show cause why the concession, under which the petitioners claim, should not be impounded by the court.

Friday, February 5*th*, 1830.

ISABELLA MACKAY, widow, and heirs of James Mackay, deceased,
vs.
UNITED STATES.

Rule to show cause why the concession in this cause should not be impounded is discharged.

MISSOURI DISTRICT, *sct:*

I, Joseph Gamble, clerk of the late court of the United States, for the Missouri district, under the authority of an act of Congress, approved the 26th May, 1824, and entitled "an act enabling the claimants to lands within the limits of the State of Missouri, and Territory of Arkansas, to institute proceedings to try the validity of their claims," certify that the foregoing is a full, true, and perfect transcript of the record and proceedings of said court, as the same remains of record in my office, in a cause therein determined, in which Isabella Mackay, widow, and the children and heirs of James Mackay, deceased, were petitioners for the confirmation of eight hundred arpents of land. Given under my hand and private seal, there being no seal of court provided, at St. Louis, the first day of October, 1830.

JO. GAMBLE.

And whereas, at the said January term, in the year of our Lord one thousand eight hundred and thirty-six, the said cause came on to be heard before the said Supreme Court of the United States, on the said transcript of the record from the district court of the United States, for the district of Missouri, and was argued by counsel; on consideration whereof, it is ordered, adjudged, and decreed by this court, that the decree of the said district court in this cause be, and the same is hereby, reversed; and proceeding to render such decree as the said district court ought to have rendered, it is further ordered, adjudged, and decreed that the title of the petitioners to the land described in their petition to the district court, is valid by the laws and treaty aforesaid, and the same is hereby confirmed as therein described; and that the surveyor of the public lands in Missouri be, and he is hereby, directed to survey the quantity of land claimed in the place described in the petition and grant, or concession; that he deliver to the petitioners a copy or plat of such survey, and also do and perform such other acts and things therein as by law are directed.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify that the preceding eleven printed pages, and three pages in manuscript, contain a full and perfect copy of the transcript of the record in the above entitled cause, and the judgment of the said Supreme Court of the United States in said cause.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Supreme Court, at the city of Washington, [L. S.] this twenty-third day of July, in the year of our Lord eighteen hundred and thirty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

2d. An extract from the Missouri Republican, as follows:

"*Extract from the Missouri Republican of July 16th*, 1823.

By the President of the United States.

Whereas, the President of the U. States is authorized by law to direct

the public lands which have been surveyed to be offered for sale, therefore I, James Monroe, President of the U. States, do hereby declare and make known that public sales, agreeably to law, shall be held as follows, viz: at the land office at St. Louis, in Missouri, on the third Monday in September next, for the sale of—

Townships No.	38, 39, and 40,	in range	7	east.
Do.	38, and 39,	do.	8	do.
Do.	38, and 39,	do.	1, 2, and 3	west.
Do.	39,	do.	4	do.
Do.	41, and 42,	do.	6	do.
Do.	41, 42, and 43,	do.	7 and 8	do.
Do.	41, and 42,	do.	9	do.

Also, at the land office at St. Louis, on the third Monday in October next, for the sale of townships No. 45, 46, 47, 48, 49, 50, 51, 52, and 53, in ranges 1 and 2 east; 48, 49, 50, and 51, in range 3 east. Also, at the land office at St. Louis, on the third Monday in November next, for the sale of—

Townships No.	45, 46, and 47,	in range	3	east.
Do.	45, 46, 47, and 48,	do.	4	do.
Do.	45, 46, 47, 48, and 49,	do.	5	do.
Do.	45, 46, 47, and 48,	do.	6	do.
Do.	45, 46, 47, and 48,	do.	7	do.
Do.	47, and 48	do.	8	do.

Also, at the land office at St. Louis, on the third Monday in December next, for the sale of—

Township No.	63, 64, and 65,	in range	5	west.
Do.	62, 63, 64, 65, and 66,	do.	6	do.
Do.	62, 63, 64, 65, 66, and 67,	do.	7	do.
Do.	62, 63, 64, 65, 66, and 67,	do.	8	do.
Do.	60, 61, 62, 63, 64, 65, 66, and 67,	do.	9	do.

The lands reserved by law for the use of schools and other purposes will be reserved from sale. Given under my hand at the city of Washington, this 13th day of June, 1823. By the president.

JAMES MONROE.

JOHN MCLEAN,
Com'r of the General Land Office.

ST. LOUIS COUNTY.

I have examined the foregoing, and compared it with the proclamation of the President of the U. S., published in the Missouri Republican, and find it to be a faithful transcript, so far as it goes.

L. HUNTON.

August 8th, 1839.

I admit this as a copy of the above proclamation.

H. R. GAMBLE.

3d. A copy of the location of Baptiste Lafleur's claim by Theodore Hunt, as follows:

Theodore Hunt enters for Baptiste Lafleur, or his legal representatives, six hundred and forty acres of land, in virtue of a certificate No. 319, dated November 30th, 1815, and issued by Frederick Bates, recorder of land titles for the territory of Missouri, beginning at the most southerly corner of Auguste Chouteau's survey of 1281 arpens; thence southerly, with the westerly line of the most westerly block of the forty arpen lots, or common field lands, continuing the same direction until the line intersects the northerly line of Mde. La. Papin's survey of 3,250 arpens of land; thence, with the last mentioned line, to the most easterly corner of a survey of 1,800 arpens, in the name of James Mackay; and with the line of his survey, and from the place of beginning, with the southerly line, and other line of said Chouteau's survey, so far that a line extends southerly and northerly the same course of the westerly boundary line of said common field lands, shall include the quantity of 640 acres of land, situate about four miles westerly of the town of St. Louis. Class No. 142.

THEODORE HUNT.

July 7, 1817.

SURVEYOR'S OFFICE, *Saint Louis*,
19*th of April*, 1839.

The above is correctly copied from the original notice of location on file in this office, made in virtue of certificate No. 319, of Frederick Bates, recorder of land titles, issued on the 30th of November, 1815, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

WILLIAM MILBURN,
Surveyor General.

4. A copy of the survey of the same by Joseph C. Browne, as follows:

Township No. 45 north, range No. 6 and 7 east.

[For plat see original.]

Surveyed for B. Lafleur, 640 acres, a New Madrid location; beginning at the N. E. corner of Papin's survey of 3,200 arpens; thence, with Gratiott's line S. 83 E. 32 ch., Gratiott's N. E. corner 77 ch., intersect the line of the common fields 6 ch. 52 links, northward of the S. W. corner of these set a post from which a cherry 3 in. dia. bears S. 43½ W., 97 links, and a cherry 5 in. dia. S. 8 W. 189 lks; thence, N. 29½ E., with the line of the Common Fields, 10 ch. 25 lks. to a stone; thence, N. 60½ W. 158 ch. 16 lks. set post, from which a R. oak, 3 in. dia., bears S. 56 W. 159 lks., and a hickory 3 in. dia. N. 67 E. 126 lks.; thence, S. 29½ W. 73 ch., intersect M. L. Papin's line, where set

a post in mound the S. W. corner of the survey, 29 ch. 75 lks. east of section corner; thence, S. 83 E. 93 ch. along Papin's line to beginning.

JOS. C. BROWN, *D. S.*

April, 1818.

SURVEYOR'S OFFICE, *Saint Louis*,
26 *April*, 1839.

The above plat and notes of survey, numbered 2,614, are correctly copied from page 88, of record book A, in this office. Said survey was executed according to the calls of the original location on file in this office, dated "7th July, 1817," and signed "Theodore Hunt," made in virtue of certificate No. 319, of Frederick Bates, recorder of land titles, issued on 30th November, 1815, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

WILLIAM MILBURN, *Surveyor General.*

The defendant then offered in evidence a patent from the United States to James Mackay's representatives for the land in controversy, dated March 31st, 1840, which was objected to by the plaintiff, but admitted by the court, and read to the jury. This patent is not here inserted, but it is agreed that the original patent may be read in the Supreme Court as if it were inserted. It is also admitted, on the part of the plaintiff, that the survey of said land, under the confirmation to James Mackay, is correctly recited and set forth in said patent. It *it* is also admitted, that all the land in the possession of the defendants is embraced with the limits called for by said patent.

5. Defendants then offered in evidence the caveat or protest filed in the Surveyor General's Office against the claim of Lafleur, in the following words:

On behalf of, and as agent for, the heirs and legal representatives of James Mackay, deceased, I do hereby give notice that the tract of land, situated near the town of Saint Louis, upon which Theodore Hunt has located, in the name of Baptiste Lafleur, a New Madrid right of 640 acres, belongs to, and is claimed by, said heirs of James Mackay by virtue of a special concession thereof to said Mackay, made by the Lieutenant Governor of Upper Louisiana, on the 14th September, 1799, and I do hereby further caution the Surveyor General against issuing any certificate or other document, upon which a patent may be granted to said Theodore Hunt, or those claiming under him, until the right and title to said land shall be determined by the district court of the United States, to which the petition of said heirs of Mackay is about to be submitted.

L. E. LAWLESS.

August 13*th*, 1824.

To the Surveyor of U. S. lands in Illinois, Missouri, and Arkansas.

SURVEYOR GENERAL'S OFFICE,
Saint Louis, 31st of July, 1839.

The above is correctly copied from a paper filed in this office, with the notice of location made under certificate No. 319, issued to "*Baptiste Lafleur, or his legal representatives*," on the 30th day of November, 1815, by Frederick Bates, recorder of land titles for the Territory of Missouri, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

WILLIAM MILBURN,
Surveyor General.

To the reading of this in evidence the plaintiff objected, and it was excluded by the court; to which decision of the court defendant excepted. Defendant here closed his testimony.

Plaintiff then offered in evidence the depositions of Joseph C. Brown and Mary P. Leduc; to the reading of which in evidence defendant objected, but the objections were overruled, and the court permitted said depositions to be read in evidence; and the said decision of the court was excepted to by defendant. The said depositions are as follows:

HAMILTON R. GAMBLE, vs. JAMES BARRY. } In the circuit court of Lincoln county.

To James Barry, the above named defendant:

Take notice, that on the twenty-ninth day of August, instant, I will attend at the office of James J. Purdy, esq., in the city of St. Louis, and State of Missouri, between the hours of six o'clock in the forenoon and six o'clock in the afternoon of that day, to take the depositions of witnesses, to be read in evidence on the trial of the above cause on the part of the plaintiff; and if the taking of said depositions should not be completed on that day, the same will be continued at the same place, and between the same hours, from day to day, until the whole shall be completed.

H. R. GAMBLE.

August 19th, 1839.

Served the within notice in the county of St. Louis, on the 24th August, 1839, by delivering to James Barry a true copy thereof.

MARSHALL BROTHERTON, *Sheriff.*
By BENJAMIN LACY, *Dpt. sheriff.*

Deposition of a witness produced, sworn, and examined, on the 29th day of August, in the year of our Lord one thousand eight hundred and thirty-nine, between the hours of six o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of James J. Purdy, in the city of St. Louis, county of St. Louis, State of Missouri, before me, James J. Purdy, a justice of the peace within and for the county afore-

said, in the State of Missouri, in a cause depending in [the] circuit court for the county of Lincoln, State of Missouri, between Hamilton R. Gamble, plaintiff, and James Barry, defendant.

On the part of the plaintiff, Mary P. Leduc, of lawful age, produced, sworn, and examined, deposeth and says, that, in the year eighteen hundred and fifteen, this deponent having some interest in what is now called New Madrid locations, he, the deponent, called on James Mackay, who had *being* deputy surveyor under the Spanish Government, for information as to vacant lands in the vicinity of St. Louis; and thereupon said James Mackay told this deponent that there was some vacant lands in the Grand prairie, lying westwardly of the place called the *Grand Marais*, and adjoining northwardly the Cote Brillante tract, originally granted to Auguste Chouteau, and bounded southwardly by lands originally granted to M. L. Papin and Charles Gratiot; he, said Mackay, giving at the same time to this deponent a plat of said county, and telling him to make that location; that, on or about the same time, the said deponent went on the ground with Mr. Edward Bates, and, after consulting, declined making the location, and gave the plat, which he had from said Mackay, to Charles Lucas, now deceased; that said vacant land on said plat mentioned, was bounded eastwardly by the common field lots of the Grand prairie.

Being shewn a plat, [a copy] of which is hereunto annexed, and on which the deponent wrote the initials of his name, to wit, M. P. L. D., sayeth, that the part of the plat or land located by Baptiste Lafleur, covers a part of the ground which said Mackay told this deponent to be vacant.

M. P. LEDUC.

Sworn and subscribed to before me, on the day, and at the time, and in that behalf, first aforesaid, August 29th, 1839.

JAMES J. PURDY,
Justice of the peace, St. Louis city and county, State of Missouri.

I, James J. Purdy, a justice of the peace within and for the county of St. Louis, State of Missouri, do hereby certify, that Mary P. Leduc, the deponent, was by me sworn to testify the whole truth, of his knowledge, touching the matters in controversy aforesaid; that he was examined, and his examination reduced to writing by him, and subscribed by him in my presence, on the day, between the hours, and at the place in that behalf first aforesaid.

JAMES J. PURDY,
Justice of the peace, St. Louis county.

Deposition of a witness produced, sworn, and examined, on the thirty-first day of August, in the year of our Lord eighteen hundred and thirty-nine, by consent of parties, by defendant's counsel, Luke E. Lawless being present, before James J. Purdy, a justice of the peace within and for the county of St. Louis, State of Missouri, at his office in the city of

St. Louis, county of St. Louis, State of Missouri, and between the rising and setting of the sun, in a cause now depending in the circuit court of Lincoln county, State of Missouri, between Hamilton R. Gamble, plaintiff, and James Barry, defendant.

On the part of the plaintiff, Joseph C. Brown, of lawful age, produced, sworn, and examined, on the part of the plaintiff, deposeth and saith: That I have been deputy surveyor under the United States since the fall of the year 1815. I surveyed, as such, under my contract, township 45 north, in ranges 6 and 7 east, of the fifth principal meridian.

On being shown a connected plat referred to in the deposition of Mary P. Leduc, says, that he is acquainted with the tract marked on same, (Auguste Chouteau,) having surveyed the same officially and unofficially. I am also acquainted with tract marked *Marie Louisa Chouteau Papin*, and with all the tracts marked on said plat. I surveyed the district embracing the land in the plat above referred to, commencing in the fall of the year 1817, and ending in the spring [of] 1818; the survey was of the public lands and the private claims in the said district. Subsequent to my surveys in that neighborhood, Mr. James Mackay rode with me to the ground to show me the survey of Chouteau, above referred to, [to] show me certain corners; we *past* over the east end of the *Lafleur* claim, which had been previously surveyed; said Mackay was not able to show the corner which interfered with the common fields, (by said Chouteau's tract, which was the northeast corner,) when on or about the Lafleur's claim. Just joining it, I asked James Mackay respecting the public land; he, Mackay, waiving his hand, said, that a portion of the land there was vacant, or public land, including the eastern part of the Lafleur tract. The conversation with said Mackay was after all the surveys were made, and before the returns were made. My impression is, that the returns of surveys above referred to, was made in the year 1820. Said Mackay, by his conversation and gesture, indicated that the land was public. I do not recollect that he mentioned any particular tract. And further this deponent saith not.

JOS. C. BROWN.

Sworn and subscribed to before me, this 31st August, 1839, *before me*,
J. J. PURDY,
Justice of the peace.

I, James J. Purdy, a justice of the peace within and for the county of St. Louis, State of Missouri, do hereby certify, that Joseph C. Brown, the deponent, was by me sworn to testify the whole truth, of his knowledge, touching the matters of controversy aforesaid; that he was examined, and his examination reduced to writing, and by him subscribed in my presence, on the thirty-first day of August, A. D. 1839, at the place, and in that behalf first aforesaid.

JAMES J. PURDY,
Justice of the peace, St. Louis county.

The whole of the deposition of Mary P. Leduc was objected to [by] Luke E. Lawless, the defendant's counsel, as irrelevant.

JAMES J. PURDY,
Justice of the peace, St. Louis county, Missouri.

That part of this deposition of Joseph C. Brown—so much of it as relates to conversation or conversations had with James Mackay, is objected to by Luke E. Lawless, the defendant's counsel.

JAMES J. PURDY,
Justice of the peace, St. Louis county.

Ts. 45 and 46 N., rs. 6 and 7 E., 5th p. m.

(For plat see original.)

SURVEYOR'S OFFICE,
Saint Louis, 26th April, 1839.

The above diagram of survey No. 2,614, in the name of Baptiste Lafleur, for 640 acres, executed in conformity with the location of Theodore Hunt, class No. 142, in virtue of certificate No. 319, of Frederick Bates, under the act of Congress of the 17th of February, 1815, and showing the connection with the adjoining surveys, is strictly conformable to the plats in this office. The survey No. 2,976, of Auguste Chouteau, for 1,281 arpens, includes the whole of the survey No. 2,677.

WILLIAM MILBURN,
Surveyor General.

Plaintiff then offered a petition of Auguste Chouteau, the concession of C. D. Delassus, lieut. gov'r, to said Chouteau, and a survey made under the same, by Antoine Soulard, for 1,281 arpens of land, binding the premises in controversy on the north, all in the French language, which were objected to by the defendant, but permitted by the court to be read as evidence in the cause, and the same was translated to the jury.

To the decision of the court, admitting said testimony, the defendant excepted. This document is not inserted, but the document, or a translation thereof, may be read on the hearing in the Supreme Court. No other testimony was offered on either side.

The plaintiff then asked the court to give to the jury the following instructions, viz :

"That the title to the premises, in the declaration mentioned, under the patent to Baptiste Lafleur, or his legal representatives, is a better title in law than the title under the confirmation to the legal representatives of James Mackay, deceased ; and, therefore, the plaintiff in this case is entitled, under the agreement of the parties, to recover the possession of the land in the declaration mentioned."

Which instruction was given by the court, and the giving of the same excepted to by the *court.*

Defendant then asked the court to give the following instructions:

"That, inasmuch as the confirmation and patent given in evidence by the defendant, show the legal estate in the premises to be vested in the widow and heirs of Mackay; and, inasmuch as the plaintiff has not shown any title under said Mackay, or his representatives, the defendant is entitled to a verdict."

The court refused to give said instruction, and the defendant excepted to said refusal. After verdict the *plaintiff* moved for a new trial in the following words:

HAMILTON R. GAMBLE, plaintiff, vs. JAMES BARRY, defendant. } Action of ejectment, Sept. 2, 1840.

Now the said defendant moves the court to set aside the verdict of the jury, and grant a new trial, for the following substantial reasons:

1st. The verdict is contrary to law.
2. The verdict is contrary to evidence.
3. The verdict is for the plaintiff, when it should have been for the defendant.
4. The court gave improper instructions to the jury.
5. The court refused to give proper instructions to the jury.
6. The court permitted improper testimony to be given to the jury.
7. The court refused to permit proper testimony to be given to the jury.

WELLS & CAMPBELL, *for defendant.*

Which motion was overruled by the court, and the defendant excepted to the decision of the court overruling said motion. No further proceedings were had in the cause, and said defendant tenders this his bill of exceptions for the signature of the court.

EZRA HUNT.

The following are the costs taxed in said cause, to wit:

Francis Parker, clerk's fees - - - -	$13 29¾
J. Ruland, clerk's fees - - - -	3 32
L. E. Powell, clerk's fees - - - -	3 70
Brotherton, sheriff's fees - - - -	4 50
Joseph C. Brown, witnesses fees - - -	6 00
M. P. Leduc, do. - - - -	6 50
M. Brotherton, sheriff's fees - - - -	1 00
H. Walton, witnesses fees - - - -	7 50
Richm'd J. Curl, do - - - -	8 50
	$54 31¾

Whole amount of costs taxed, fifty-four dollars and thirty-one and three-fourth cents.

STATE OF MISSOURI, *county of Lincoln, ss:*

I, Francis Parker, clerk of the circuit court in and for Lincoln county,

in the State of Missouri, certify that the foregoing fifty-six pages contain a true and full transcript of the record and proceedings in the case of Hamilton R. Gamble, plaintiff, against James Barry, defendant, in an action of trespass and ejectment, as the same remains of record, and on file in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said circuit court, at my office, in the town of Troy, in said county of Lincoln, this 14th day of September, A. D. 1840.

FRANCIS PARKER, *Clerk.*
Per T. G. HUTT, *D. C.*

And afterwards, at a supreme court of said State, on the twentieth day of October, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had in said cause, and entered of record in said court, to wit:

JAMES BARRY, plaintiff in error,
vs.
HAMILTON R. GAMBLE, defendant.

Error to circuit court of Lincoln county.

And now, at this day, comes the plaintiff in error, and files herein his assignment of errors.

And afterwards, on the 21st day of the month last aforesaid, and at the court aforesaid, the following order was entered of record in said cause, to wit:

JAMES BARRY, plaintiff in error,
vs.
HAMILTON R. GAMBLE, defendant.

Error to circuit court of Lincoln county.

And now, at this day, comes the defendant in error, and files a joinder in error herein.

The assignment of errors and joinder aforesaid are in the following words, to wit:

HAMILTON R. GAMBLE, plaintiff,
vs.
JAMES BARRY, defendant.

Action of ejectment. Writ of error to Lincoln circuit court, Mo.

Now, at this day, appears said defendant, James Barry, who is here plaintiff in error, and for causes of error in the record and proceedings in this cause, assigns the following:

1st. The circuit court erred in refusing to admit in evidence the caveat or protest filed in the surveyor general's office against the claim of Lafleur.

2nd. The circuit court erred in permitting the concession to Chouteau to be read in evidence.

3rd. The circuit court erred in permitting the depositions of Joseph C. Brown and Mary P. Leduc to be read in evidence.

4. The court erred in giving the instruction asked for by the plaintiff.
5. The circuit court erred in refusing to give the instruction asked for by the defendant.
6. The circuit court erred in refusing to grant a new trial.

All which he is ready to verify.

WELLS & CAMPBELL,
Att's for defendant.

The defendant in error comes, in proper person, and says there is no error in the said judgment.

H. R. GAMBLE.

And afterwards, at a supreme court of said State, on Wednesday, the 7th day of September, one thousand eight hundred and forty-two, the following proceedings were had in said cause, and entered of record in said court, to wit:

JAMES BARRY, plaintiff,
vs.
HAMILTON R. GAMBLE, defendant. } Error.

The court not yet being sufficiently advised of and concerning the premises, take until the next term of this court to consider the same.

And afterwards, to wit, on the 25th day of July, one thousand eight hundred and forty-three, at a supreme court of said State, held at the city of Jefferson, pursuant to an act of the general assembly of said State, entitled "An act to concentrate the supreme court," approved February 24, 1843, the following judgment was entered of record in said cause, to wit:

JAMES BARRY
vs.
HAMILTON R. GAMBLE.

Error to Lincoln circuit court.

Now, at this day, come again the parties aforesaid, by their respective attornies, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by the said circuit court rendered, be in all things affirmed, and stand in full force; and that the said defendant recover of the said plaintiff his costs and charges by him in this behalf expended, and that he have thereof execution.

Opinion of the court filed.

Said opinion is in the words and figures following, to wit:

BARRY
vs.
GAMBLE.

Error to Lincoln C. C.

This was an action of ejectment, brought by Gamble against Barry, to recover a tract of land in St. Louis county. By change of venue, the

case was removed to Lincoln county, where it was tried, and a verdict and judgment obtained for Gamble.

From an agreement entered on the record, it appears that the plaintiff (Gamble) had all the title which vested in the representatives of Baptiste Lafleur, by virtue of a New Madrid location and patent in 1827; and that Barry holds all the title that arises under a decree of confirmation made by the Supreme Court of the United States to the representatives of James Mackay, in 1830; and that Barry was in possession of the premises at the time the action was instituted.

It appears, from testimony offered on both sides, in the court below, that the titles of Lafleur and the representatives of Mackay were as follows:

By virtue of the act of 17th Feb'y, 1815, the recorder of land titles issued a certificate on the 30th November, 1815, to Baptiste Lafleur, or his legal representatives, authorizing him to locate six hundred and forty acres of land.

On the 7th July, 1817, Theodore Hunt, by virtue of this certificate, located the land in controversy.

The survey of this location was made by Jos. C. Brown in April, 1818.

On the 13th June, 1827, a patent issued to Lafleur, or his legal representatives.

It was also offered to be proved, on the part of the defendant, that, on the 13th August, 1824, Luke E. Lawless, as agent for Mackay's representatives, filed a caveat or protest, against Hunt's location, in the surveyor general's office, but the testimony was excluded.

The title of the defendant was founded on a confirmation made by the Supreme Court of the United States, in 1830, to the representatives of James Mackay. It appears by the record of the suit in which this confirmation was made, that an action was instituted by the widow and heirs of James Mackay, under the act of May 26th, 1824, and the acts supplementary thereto, by petition filed in the district court on the 25th May, 1829, to procure a confirmation of a concession made by Lieut. Governor Delassus, on the 14th September, 1799. This concession is in the usual form, and ordered the surveyor to put Mackay in possession of the tract petitioned for. It is stated by the petitioners that the claim had not been filed with the recorder of land titles, or board of commissioners, the said concession having been sent to New Orleans by said James Mackay, and not returned in time to enable him to file the same. The final decree of the Supreme Court of the United States was at the January term 1830, and was as follows:

"It is ordered, adjudged and decreed, that the decree of the said district court in this case be, and the same is hereby, reversed; and proceeding to render such decree as the said district court ought to have rendered, it is further ordered, adjudged and decreed, that the title of the petitioners to the land described in this petition to the district court, is valid by the laws and treaty aforesaid, and the same is hereby confirmed as therein described; and that the surveyor of the public lands in Missouri be, and he is hereby, directed to survey the quantity of land claim-

ed, in the place described in the petition and grant, or concession; that he deliver to the petitioner a copy of such survey, and also do and perform, &c., &c."

A patent for this land issued to Mackay's representatives, dated March 31st, 1841.

The plaintiff below, with a view to impeach the validity of the original concession of Delassus, gave in evidence two depositions, relating to the concession of an adjoining tract to Auguste Chouteau, and some admissions made by Mackay; but as the decision of the circuit court was based upon grounds entirely foreign to these matters, and the plaintiff derived no benefit whatever from this testimony, it is not deemed material that it should be noticed.

The defendant Barry also, for the purpose of showing the invalidity of the New Madrid location and patent, gave in evidence the President's proclamation, by which it appeared that the lands in the township wherein this land lay was authorized to be sold in October, 1823.

This was all the evidence in the case, and upon this state of facts the circuit court instructed the jury, that the titles under the patent issued to Baptiste Lafleur, or his legal representatives, is a better title in law than the title under the confirmation to the heirs of Mackay, and therefore under the agreement of the parties the plaintiff is entitled to recover.

In investigating the respective value of these titles, the question which most naturally presents itself at the outset is, what is the effect of a confirmation under the act of 1824, and the acts supplementary thereto? If, as has been strongly urged at the bar, that confirmation was not a mere relinquishment of title on the part of the United States, but a confirmation in law as well as in terms; not a mere grant, but a confirmation, recognizing the claim of Mackay as genuine and valid from its origin, good according to the laws of Spain, the treaty of cession, and the laws of the United States, and attaching itself by relation to the original concession, so as to exclude all intervening titles emanating from the Federal Government, the claim of the defendant in error is at an end.

The second section of the act of May 24, 1828, under which this claim was confirmed, would seem to leave this no longer an open question; but the zeal and ability with which this point has been urged by counsel, repels the supposition that it is yet considered settled.

A confirmation made under the act of 1824, and confirmations by statutory enactment, subsequent to the investigation of the recorder and boards of commissioners, are unquestionably recognitions of pre-existing title, and not mere grants de novo. By them, all the proprietary interest of the United States is vested in the claimant, and it is in terms and in effect acknowledged, that the title of the claimant was valid under the law and usages of the former government, and protected by the treaty of cession. It does not follow from this, however, that these confirmations recognise such claims as perfect and complete titles, or that they give them, as against other claimants, any more validity than they would have had under the former government.

And what was the condition and character of these concessions under

the government of Spain? They were orders of survey, or directions to the surveyor to put a party in possession of a tract of land, which he prayed for the purposes of inhabitation or cultivation. It never was supposed that such orders gave the party a title, or indeed that the Lieut. Governor of Upper Louisiana had any authority to grant lands. So that if the Spanish authorities at New Orleans failed or refused, from any cause, to perfect the title conceded by the commandant at St. Louis, and made a different disposition of the same land, it is not pretended that the grant of the Intendant General would not, according to the laws of Spain, prevail over the rights of the person who had the inchoate title. The Government of the U. States, then, succeeding to the rights, and assuming the duties of the king of Spain, has the same power to grant a complete title to one, notwithstanding the existence of an inchoate right in another, and in such event a subsequent confirmation to the party holding the prior right could avail nothing, the government having parted with their interest before the confirmation.

That Congress was fully apprized of this, will be seen by an examination of all their acts on this subject. By the 11th section of the act of May 26th, 1824, it is provided, that if in any case it should so happen, that the lands decreed to the claimant under the provisions of this act shall have been sold by the United States, or otherwise disposed of, or if the same shall have been heretofore located, it shall be lawful for the party interested to enter, after the same shall have been offered at public sale, the like quantity of lands in any land office in the State of Missouri.

It is apparent, that if the confirmations made under this act were intended to operate upon the inchoate titles, so as to cut off all intervening claims originating under the United States, this section was entirely superfluous. No title could have emanated from the Federal Government previous to the origin of the Spanish claim, and upon the construction contended for there would be nothing upon which this section could operate.

But the second section of the act of 24th May, 1828, places this matter beyond controversy. That section declares, that "confirmations had by virtue of this act, and the patents issued thereon, shall operate only as relinquishments of title on the part of the United States, and shall in no wise affect the right or title, either in law or equity, of adverse claimants of the same land."

Under this last act, the confirmation to Mackay's representatives was procured, and it cannot be doubted, whatever diversity of opinion may have existed in relation to the effect of the act of 1824, that this confirmation and patent amounted merely to a relinquishment of the title of the United States.

Such being the condition of the defendant's title, shall this confirmation in 1830 prevail over the patent of Lafluer in 1827? In other words, had the lands decreed to Mackay's representatives been sold by the United States, or otherwise disposed of, or had they been located, within the meaning of the 11th section of the act of 1824? By the provisions of an act to extend the time for locating Virginia military warrants, and for

other purposes, passed March 2d, 1807, it was declared, that "no locations should be made on tracts of land for which patents had previously been issued, or which had been previously surveyed."

In the case of Lindsey and others vs. Lessee of Miller, (6 Peters's R., 672,) the Supreme Court of the United States were called upon to decide, what surveys were protected by this proviso, and their conclusion was, that Congress did intend to protect surveys which had been irregularly made, but did not design to sanction void surveys.

Upon the authority of this case, as well as upon principle, it may be assumed, that the provisions of the 11th section of the act of 1824 were not designed to protect sales or patents which were absolutely void, and the only matter remaining for enquiry, to decide the merits of the present case, will be, whether the patent to Lafleur, issued in 1827, was void.

In the case of Hoofnagle vs. Anderson (7 Whea.,212) the court held, that a patent was a title from its date, and conclusive against all those whose rights did not commence previous to its emanation.

In the case of Jackson vs. Clark and others, (1 Peters's R., 628,) the same principle is asserted, as the court held in the case of Lindsey and others vs. Lessee of Miller, and an irregular survey was considered as protected by the proviso of the act of 1807.

In the case of Polk's Lessee vs. Wendall, (9 Cran., 99) the principle upon which that court has acted, in examining at law the validity of patents, is fully laid down and clearly illustrated.

The chief justice who delivered the opinion of the court in that case, said: "The laws for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals, and also to protect the State from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are, in general, directory, and when all the proceedings are completed by a patent, issued by the authority of the State, a compliance with these rules is pre-supposed. That every pre-requisite has been performed is an inference properly deducible, and which every man has a right to draw from the existence of the grant itself. It would therefore be extremely unreasonable to avoid a grant in any court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of a title, from its commencement to its consummation, in a patent.

"But there are some things so essential to the validity of a contract, that the great principles of justice and of law would be violated, did not there exist some tribunal to which an injured party might appeal, and in which the means, by which an elder title has been acquired, might be examined."

After observing, that a court of equity is in general the most suitable tribunal for the adjustment of questions of this character, the judge proceeds: "There are cases in which a grant is absolutely void; as where the State has no title to the thing granted, or where the officer had no authority to issue the grant. In such cases the validity of the grant is necessarily examinable at law."

The general principle is here clearly laid down; the only difficulty is in ascertaining what acts are to be considered as irregularities, and what are essential to the validity of the grant.

The facts upon which the court acted in that case, made out a case in which the State attempted to convey lands to which they had no title. After the cession of a district of land from North Carolina to the United States, in 1789, North Carolina, by the terms of the deed of cession, had no authority to grant any more lands, except to such persons as had made entries prior to the cession.

It did not appear upon the face of the grant, that the title accrued before the cession, and the court allowed that matter to be examined into, and permitted the party contesting the patent to show, that there was no entry, and no warrant authorized by the State of North Carolina, before the cession. Upon such facts appearing, the court held the patent void, for want of power in the State to make any such grant.

So in the case of McConnell's Lessee vs. Wilcox, (13th Peters' R.,) it was held, that an entry with the register and receiver of land, expressly reserved from sale, was null.

In the case of Sarpy vs. Papin, (7 Mo. R.,) this court held, that when an entry of land in the Land Office had been made, at a time when there was by law a reservation of the land from sale, and a patent issued after the reservation had been taken off, a party should not be permitted to go behind the patent to show such irregularity.

It is to be observed, however, that the opinion of the court in that case was founded on a mistaken assumption of the statute law. The act of May 22d, 1826, continuing the time of filing claims, under the act of May 26, 1824, for two years longer, appears to have escaped the observation of the counsel in that case, as it certainly did of the court. The act is entitled, "An act for the relief of Phineas Underwood, and for other purposes;" and it is not singular, that neither the counsel nor the court should have thought of looking into an act with such a title to find a general law respecting the settlement of land claims in Missouri. This act not seeming, from its title, to be a public act, was not printed in Story's Compilation. The court proceeded on the assumption that, between the expiration of the act of 1824, and the passage of the act of May 24th, 1828, there was an interval, during which the reservations of Spanish claims had been taken off by Congress, and the land declared public land, and consequently subject to be sold. That opinion, therefore, so far as that point is concerned, is entitled to no weight.

Where the State has no title to the land conveyed, it is obvious that her grant can convey none; but what is meant by the court in Polk's Lessee vs. Wendall, where they say, that it is also void, when the officer has no authority to make the grant, admits of some doubt. Does the authority there spoken of apply to the incipient stages of the title, or to the period at which it is said to be consummated in a patent? Is it intended that every step taken by the officers who superintend the stages of the title, shall be in accordance with the mandates of the law, or was it merely meant, that when the title was perfected, and the grant issued, it

should then be within the scope of the officer's power? It would seem, from the general tone of the opinion, that irregularities in the officers, or failures to comply with any of the mandatory provisions of the statute, were not sufficient to avoid the grant.

In no case, perhaps, has this court gone further than it did in the case of Polk's Lessee vs. Wendall; and it may, therefore, be safely assumed, as the result of the authorities, that the irregularities of subordinate agents, in the incipient stages of a title, cannot be investigated for the purpose of impeaching the grant, unless the acts are such as are essential to the contract, and on the performance of which depends the power and authority of the State to make the grant.

The act of February 17th, 1815, for the relief of the inhabitants of the county of New Madrid, who suffered by earthquakes, permitted the owners of lands in New Madrid, on making a relinquishment to the Government of their lands in that county, to locate a like quantity on any of the public lands, "the sale of which was authorised by law." What lands are embraced under this description? Did Congress mean that all the land which the President, by the act of March 3d, 1811, was authorised to bring into market and dispose of in the manner prescribed by that act, should be subject to location, or were the claimants under this act of 1815 restricted to such lands as had been actually surveyed? This question, it appears from the public documents, excited much discussion immediately after the passage of the act, and the counsel for the plaintiff in error lays much stress upon the official opinions of Mr. Wirt, who was the Attorney General of the United States at the time this discussion arose, and who held, that locations could not be made until after the surveys, and that locations made anterior to the public surveys were mere nullities. Great respect is due to the opinion of Mr. Wirt, but it must be recollected, that these opinions were ex parte; and if contemporaneous construction is to have any weight with a court in the construction of a law, it will be found, that the officers of the Government who had charge of this branch of the public service, and who, called upon in their official capacity to act under the law, differed widely from Mr. Wirt on this subject.

A reference to the public documents shows that the commissioner of the general land office, and the surveyor general acting under his instructions, allowed locations to be made upon any lands not reserved from sale. (2 Land Laws, Instr., &c., p. 815, 816.) It is true that the action of the department was subsequently conformed to the official opinion of the Attorney General; yet, as late as 1821, after a correspondence between Major Berry and the Treasury Department, in which it was agreed, to avoid the objections of Mr. Wirt, that re-locations should be made, we find the commissioner of the land office adhering to his first opinion, and suggesting the probability of an act of Congress which would sanction the irregular locations. His letter to the surveyor general thus concludes: "The directions of the Secretary sent in my letter of the 5th July, (and to which you allude,) are not imperative. The locations may be withdrawn. I presume the holders of them will wait

to see what may be done at the next session of Congress." (2 Land Laws, Opin., &c.)

Accordingly, we find an act, passed on the 26th day of April, 1822, the first section of which declares, that "the locations heretofore made of warrants issued under the act of 15th February, 1815, if made in pursuance of the provisions of that act in other respects, shall be perfected into grants in like manner as if they had conformed to the sectional or quarter-sectional lines of the public surveys."

It may be admitted that this act leaves the question open as to what lands were liable to be located under the original act of 1815; yet it certainly deprives those who advocated the narrow construction of that law of the foundation on which all their objections were based. The only apology for their construction of the act of 1815 was, that the admirable system of our public surveys should not be infringed. And when Congress, in 1822, passed this act, which recognised the validity of locations which did not conform to the public surveys, it mattered nothing, so far as the preservation of this system was concerned, whether the locations had been made previously or subsequently to the public surveys.

The act of 1815 was designed as a gratuity to those who had suffered by the earthquakes. Humanity and charity prompted the law, however much it may have been perverted to the purposes of fraud and speculation. Is it reasonable that, with such motives avowed on the face of the act, Congress should have postponed the execution of their charitable purposes until the completion of the public surveys? The sales, it appears from the public documents, did not take place until 1818, and in the township whereon the present claim was located until in 1823.

But the act itself, giving it either construction, did infringe, to some extent, upon the subdivisional arrangements of the public surveys.

All locations between one hundred and sixty and six hundred and forty acres were departures from the general system. Moreover, all locations of every description were, by the second section, required to be surveyed by the deputy surveyor, and a plat to be made out and returned to the recorder. If locations could only be made on lands after the public surveys, it is plain that the duties imposed by this section were, in many instances, superfluous. In locating any quantity of acres which corresponded with the section or sectional subdivisions, after the public surveys, no new survey would have been necessary.

If the words "authorized to be sold" are to be construed in a strict and limited sense, why should locations be allowed, where only one of the prerequisites of the law has been complied with? Why stop at a survey, and dispense with the other steps equally mandatory on the officers, before a sale could be regularly made? The mere survey did not bring lands into market. Land offices were to be established, officers appointed, and due notice given by the proclamation of the President, before a sale could take place under the act of 1811.

Whatever may be the proper construction of these words in the act of 1815, (and we leave that question sub judice,) the above views of the act, and of the construction which it received immediately after its pas-

sage, will show that the pre-requisites, provided by the act of 1811, were all on a like footing; that a survey, the establishment of land offices, the appointment of officers to superintend the sales, and a due notice of the time of sale by proclamation of the President, were all alike preliminary to a valid disposition of the public lands; that they were all duties entrusted to the President of the United States, and could all be performed without any further action on the part of Congress; that the locators, under the act of 1815, were not in any worse condition, at least, than those who were authorized to buy at public sale; and consequently these preliminary steps in obtaining the complete title, under the superintendence of the officers appointed by Government for that purpose, must be presumed to be regular when a patent has issued, unless it can be made to appear, that when the location was made, the land was expressly reserved from sale. This will be permitted, tho' the patent on its face is regular, and the facts must appear *aliunde;* and this is going as far as the doctrine of the court, in Polk's lessee vs. Wendall, will warrant.

Let us then see whether this land, when the location was made, was expressly reserved from sale by the act of 1811. After reserving sixteenth sections, mineral lands, and salt springs, it is provided that, "till after the decision of Congress thereon, no tract of land shall be offered for sale the claim to which has been, in *due time and according to law*, presented to the recorder of land titles in the district of Louisiana, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana." Now, what was the law in relation to the time of filing these claims when this act was passed? The 4th section of the act of 2d March, 1805, (L. L. p. 123,) declared that every person claiming lands in the territory by any French or Spanish grant, made and completed before Oct'r 1st, 1800, or by virtue of any incomplete title, should, before the 1st March, 1806, file with the register of the land office, or recorder of land titles, a notice of his claim; and further declared that, if any one failed to do so, such grant, or incomplete title, should never after be admitted in evidence in any court of the United States *against any grant derived from the United States.*

The fifth section of the act of March 3d, 1807, extended the time of filing claims to the first of July, 1808, and declares "that the rights of such persons as shall neglect so doing, within the time limited by this act, shall, so far as they are derived from, or founded on any act of Congress, ever after be barred and become void; and the evidences of their claims never after admitted as evidence in any court of law or equity whatever." Such was the law at the time of the passage of the act of 1811. The act of February 17, 1818, makes provision for the establishment of additional land offices in the Territory of Missouri; and the 3d section directs the President to offer for sale the surveyed lands, with the "same reservations and exceptions, and on the same terms and conditions," as was provided in the tenth section of the act of 1811.

The act of 13th June, 1812, allows *actual settlers* further time to file their claims; but it is clear, that all claims which were not filed with

the recorder by the 1st July, 1808, were not within the reservation of the 10th section of the act of 1811; they had not been filed in *due time* and *according to law.* The claim of Mackay, it appears from his petition to the district court in 1829, had not been filed with the recorder, or brought before any board of commissioners. It was, therefore, not within the reservation of the act of March 3d, 1811.

Congress, it is true, may disregard these acts of limitation, and may admit claims, as they did by the act of 1824, to be presented to their courts, notwithstanding they may have been barred; but this must not be to the prejudice of those rights which have accrued upon the faith of prior acts. When the patent issued to Baptiste Lafleur, in 1827, there was no evidence on the public records of any claim set up by Mackay to the land in controversy; so far as that title depended on the United States, it was barred, both at law and equity, by the acts of 1807, 1811, and 1818. Up to 1827, when this patent issued, no effort, even under the act of 1824, was made by Mackay to bring this claim before the district court of the United States; and it was not until 1829, two years after the patent had issued to Lafleur, that the claim was set up for the first time.

It was then too late; the U. States had parted with their interest to Lafleur's representatives; and if Mackay's representatives had a title, such as the Supreme Court of the United States decided it to be, good according to the laws and usages of Spain, and protected by the treaty, which by delay was not ripened into a perfect title until after the fee had passed from the United States to another, they cannot justly complain of any breach of faith on the part of the United States.

The statutes of limitation, passed from time to time, advised them of the wishes of Congress—the claim being barred by these acts, they seek the bounty held out by the act of 1828, and must take it on the terms prescribed in the act.

Judgment affirmed.

State of Missouri, to wit:

I, Hampton L. Boon, clerk of the supreme court of the State of Missouri, do hereby certify, that the annexed and foregoing manuscript of ninety-three pages contain a true, complete, and perfect transcript of the record and proceedings in the case of James Barry against Hamilton R. Gamble, as the same remain of record in my office.

Given under my hand and private seal, having no official seal provided, at the city of Jefferson, the second day of November, in the year of our Lord one thousand eight hundred and forty-three.

[SEAL.]

HAMPTON L. BOON.

MISSOURI DISTRICT, *sct:*

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting:

[SEAL.]

Because in the record and proceedings, and also in the rendition of

a judgment of a plea in said supreme court, between James Barry, plaintiff in error, and Hamilton R. Gamble, defendant in error, wherein is drawn in question the construction of a statute of the United States, and the decision is against a title especially set up by said plaintiff in error, under such statute a manifest error hath happened to the great damage of the said plaintiff in error, as aforesaid. We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the seventh day of August, in the year of our Lord one thousand eight hundred and forty-three.

Issued at office, in the city of St. Louis, under the seal of the circuit court of the United States, for the district of Missouri, the day and year last aforesaid. JOS. GAMBLE,

[SEAL.]

Cl'k U. S. C. C. Missouri district.

STATE OF MISSOURI, *sct:*

I, Hampton L. Boon, clerk of the supreme court of the State of Missouri, do hereby certify, that in obedience to this writ, I have prepared, and herewith transmit to the Supreme Court of the United States, the record and proceedings in the case of James Barry, plaintiff in error, against Hamilton R. Gamble, defendant in error, lately pending in our supreme court aforesaid.

Given under my hand and private seal, having no official seal, at Jefferson city, the second day of November, in the year of our Lord one thousand eight hundred and forty-three.

[SEAL.]

HAMPTON L. BOON.

MISSOURI DISTRICT, *sct:*

The President of the United States, to Hamilton R. Gamble, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein James Barry is plaintiff in error, and Hamilton R. Gamble is defendant in error, to shew cause, if any there be, why judgment rendered against said James Barry, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable George Tompkins, judge of the supreme court of the State of Missouri, the tenth day of August, in the year of our Lord one thousand eight hundred and forty-three.

GEORGE TOMPKINS.

This citation served on me this day, August 10th, 1843.

H. R. GAMBLE.

Assignment of errors.

JAMES BARRY,
vs.
HAMILTON GAMBLE,

Supreme Court of the United States, January term, 1844.

And now, at this day, comes the said James Barry, by his attorney, and says, that in the record and proceedings there is manifest error, in this, to wit: that by the record aforesaid, it appears that the judgment in form aforesaid was given for the said Hamilton Gamble, when by the law of the land the said judgment ought to have been given for the said James Barry against the said Hamilton Gamble.

And there is error also in this, the right and title set up and claimed by said plaintiff in error, to the land in dispute, was specially set up and claimed by said plaintiff in error, under a treaty, and under a law, and under a decision of the Supreme Court of the United States, and the decision of said supreme court of the State of Missouri was against said right and title; whereas, said decision ought to have been in favor of said right and title so specially set up and claimed by said plaintiff in error, as same appears by the record aforesaid; and said James Barry prays, that the judgment aforesaid, for the errors aforesaid, and others being in the record and proceedings aforesaid, may be reversed, annulled and held as void, and that said James Barry be restored to all things which he hath lost by reason of the judgment aforesaid.

L. E. LAWLESS,
Attorney for said James Barry, plaintiff in error.

Filed 1844.

1822

SUPREME COURT OF THE UNITED STATES.

No. 123.

NELSON F. SHELTON, APPELLANT,

vs.

CLAYTON TIFFIN AND LILBURN P. PERRY.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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Be it remembered that, on the 21st day of April, 1842, the complainants, Clayton Tiffin and Lilburn P. Perry, came into court, by Francis H. Upton, their solicitor, and filed [the] following bill in equity, to wit:

In equity.

To the hon. the judges of the circuit court of the United States for the ninth judicial circuit.

Humbly complaining your orators, Clayton Tiffin and Lilbonne P. Perry, who are residents of the city of St. Louis, and citizens of the State of Missouri, shew to this honorable court that, on the tenth day of April, A. D. 1838, they were the true and lawful owners, in equal and undivided interest, of a certain tract of land lying in the parish of Madison, in the State of Louisiana, and within the eastern judicial district of said State; and also that they were the true and lawful owners, in equal and undivided interest, of thirty-four slaves, living upon, and appertaining to, said land; which land and slaves are particularly described in the act of sale from your orators, to one Samuel Anderson, then residing in Warren county, in the State of Mississippi, but who is now a citizen of Louisiana, executed by your orator before the said parish judge of said parish of Madison, on said tenth day of April, A. D. 1838; a duly authenticated copy of which your orators annex to this their bill, for the consideration of this honorable court. Your orators shew, as by said act of sale it doth appear, that they did then execute a conveyance of said land and slaves to the said Samuel Anderson, and that the said Samuel Anderson did agree to pay to your orators therefor the sum of seventy-five thousand dollars; that thirty-five thousand dollars of said sum was, by the agreement of said Anderson, to be paid in three equal instalments, the first on or before the first of January, 1842, the second on or before the first of January, 1843, and the third on or before the first of January, 1844, and that, as security therefor, the said Anderson was to execute to your orator a mortgage of said land and slaves.

Your orators further shew and state that, after having executed said deed of conveyance to said Samuel Anderson, they authorized and empowered John M. Perry, who is the father of your orator Lilburn P. Perry, and the father-in-law of your orator Clayton Tiffin, to receive, on their behalf, from the said Samuel Anderson, the said sum of thirty-five thousand dollars, which the said Anderson had agreed to pay in cash, and also to receive, on their behalf, the said sum of forty thousand dollars, on the evidence of the same, in notes or bonds to your orators, with the said mortgage security to your orators, according to the agreement of the said Anderson.

Your orators further state and show that, on the first of March,

A. D. 1839, the same being the time when the said Anderson was to take possession of said land and slaves, under the act of sale to him executed by your orators as aforesaid, and the same being the time when the said Anderson, according to his agreement, was to pay your orators, through their aforesaid agent John M. Perry, the aforesaid sum of thirty-five thousand dollars, and to execute to your orators his notes or bonds for the aforesaid sum of forty thousand dollars, and his mortgage upon said land and slaves as security for said notes or bonds. The said Anderson did give to the said John M. Perry his acquittance of a certain debt due to him the said Anderson from your orator Lilburne P. Perry and the said John M. Perry, for the sum of thirteen thousand dollars, or thereabouts, as a part of said cash payment of thirty-five thousand dollars. And your orators state and aver, that the remainder of said sum, or any part thereof, has never been paid them by the said Anderson, or by any one on his behalf, or their agent the said John M. Perry, but that the said Anderson, with the intent to defraud your orators thereof, did deliver to the said John M. Perry a certain note for the sum of $18,282 and 65 cts., signed by one H. R. Austin, by one J. B. Ragan, and by one Wylie Bohannan, payable to the said Samuel Anderson on the first of April, 1839, he the said Anderson avering to the said John M. Perry, the agent of your orators, that the said note was as good as the money, and would be promptly paid, by said declarations prevailing upon the said John M. Perry to receive the said note as money, at the same time that he the said Anderson *Anderson* knew that the same was without value and would not be paid, and that the parties signers thereof were utterly insolvent; and your orators state and show that said note has not been paid, although the signers thereof have been pursued to insolvency; nor has any other portion of said sum of thirty-five thousand dollars been paid them, or any other one on their behalf, by the said Anderson, or any one on his behalf.

And your orators do further shew and state that, for the said sum of forty thousand dollars, the said Samuel Anderson did, on the said first day of March, 1839, execute his three several notes or bonds to your orator, Lilbourne P. Perry, each for the sum of $13,333, payable as aforesaid, the one on or before the first of January, 1842, the other on or before the first of January, 1843, and the third on or before the first of January, 1844, reciting in each of said notes or bonds that the same was given for the purchase of land and slaves from your orators, Clayton Tiffin and Lilbourne P. Perry; and on the ninth day of July, A. D. 1839, the said Samuel Anderson did execute his act of mortgage before the parish judge of the said parish of Madison, to the said Lilbourne P. Perry, one of your orators, of the land and slaves conveyed to him by your orators, together with certain other slaves described in said act of mortgage as security to your orator, the said Lilbourne P. Perry, or to whomsoever might be the legal holder and owner of the said notes or

bonds therein described, for the full and just payment of the same; and your orators annex to this their bill a duly authenticated copy of said act of mortgage, and pray the consideration thereof by this honorable court. And your orators also annex, to this their bill, certified copies of the *the* several notes and bonds which were secured by the said mortgage; the original of said notes or bonds your orators do not annex hereto, for the reason which they will *not* proceed to state and show to this honorable court.

Your orators aver that, some time in the autumn of the year 1839, the agent of your orators, the said John M. Perry, who was then in the vicinity of said land and slaves mortgaged by the said Anderson as aforesaid, and then occupied and possessed by the said Anderson, fearing that the said Anderson would impair or destroy the mortgage security of your orators by disposing of or carrying off said slaves, did institute said [suit] against said Samuel Anderson in the district court of the ninth judicial district of Louisiana, in the name of your orator Lilbourne P. Perry, because the said notes or bonds were made payable by the said Samuel Anderson to your orator Lilbourne P. Perry, but for the benefit of both your orators, as said notes or bonds were equally the property of your orator Clayton Tiffin, and your orator Lilbourne P. Perry, and in said suit the agent of your orator, the said John M. Perry, did file said original notes or bonds, and pay for a sequestration of the said mortgaged slaves; but your orators aver and state, that previous to the execution of any order of sequestration in said suit, either for the reason that apprehensions of the said John M. Perry, the agent of your orators, became allayed, or for some other cause, the said suit was discontinued.

And your orators do further state and show to this honorable court, that on the 11th day of January, A. D. 1839, as your orators have since ascertained from the records of this honorable court, one Hillery Mosely and one William W. Bouldin, declaring themselves to be citizens of the Commonwealth of Virginia, did institute suit in this circuit court against your orator Lilbourne P. Perry and the said John M. Perry, for the recovery of a debt which they alleged to be due to them from your orator Lilbourne P. Perry and the said John M. Perry, amounting to nearly the sum of seven thousand dollars.

And your orators aver and state, that in said suit, as they have since ascertained, the said petitioners did procure a judgment against your orator Lilbourne P. Perry, as well as the said John M. Perry, for the amount claimed by them in their petition; that upon said judgment, the said petitioners did procure the writ of fieri facias of this honorable court against the property of your orator Lilbourne P. Perry, and that the same was placed in the hands of the marshall of the United States, for the eastern district of Louisiana, who (as your orators' state, will appear by the return of the said marshall upon said writ of fieri facias in this court) did, upon the

23d day of November, 1839, seize, as the property of the said Lilbourne P. Perry, said debt of forty thousand dollars, as evidenced by the three several notes or bonds which the said John M. Perry, as agent of your orators, had filed in said suit, in said district court of the ninth district of Louisiana, and the mortgage security upon the same, given by the said Samuel Anderson, and thereafterwards, as further appears by the return of said marshal*l*, on the 4th day of January, 1840, after having, as is alleged by the said marshal*l*, complied with the legal prerequisitions, did sell the same as the property of your orator Lilbourne P. Perry, upon a credit of twelve months, to the said Samuel Anderson, for the sum of five thousand dollars, whereby, and by virtue of said pretended judgment, execution, sale, and adjudication to the said Samuel Anderson, the said Anderson preten*t*ed to have discharged said mortgage, and to have become possessed of a title to said land and slaves, unincumbered by the said mortgage of forty thousand dollars, given by the said Anderson for the purchase of said land and slaves from your orators.

And your orators aver and state, that one Robert Anderson, who resides in the State of Louisiana, and the parish of Madison, and who is the father of the said Samuel Anderson, and one Nelson F. Shelton, senr., who also resides in the State of Louisiana, and the parish of Madison, both citizens of the State of Louisiana, conspiring together with the said Samuel Anderson, the more effectually to wrong and defraud your orators of their just, legal, and equitable rights and dues for the purchase of said land and slaves, and well knowing of the right and titles of your orators, by virtue of said notes and mortgage, and that the same were the joint property of both your orators, because given for the joint purchase from your orators, did procure a judgment against the said Samuel Anderson, in the district court for the ninth judicial district of the State of Louisiana, and, upon the writ of fieri facias which issued upon the said judgement against the property of the said Samuel Anderson, did, on the 14th day of June, A. D. 1841, bec*a*me the purchasers, for the sum of thirty six thousand dollars, of the said land and slaves, as the property of the said Samuel Anderson, which the said Samuel Anderson had mortgaged to your orators; whereby, and by virtue of the said pretended judgment against the said Samuel Anderson, and said pretended sale and adjudication to the said Robert Anderson and the said Nelson F. Shelton, senr., as well as by virtue of said preten*t*ed judgment against your orator Lilbourne P. Perry, and said pretended sale and adjudication of said land and slaves as the property of your orator Lilbourne P. Perry, or of said notes or bonds, with the mortgage of said land and slaves as security for the same, the said Robert Anderson and the said Nelson F. Shelton, senr., preten*t*ed to have become the rightful owners and possessors of said land and slaves, unincumbered by the said mortgage given by the said Samuel Anderson as security for the said forty thousand dollars, due by the said Samuel Anderson for the purchase of said property from your orators.

Now your orators humbly complaining, do further state and shew to this honorable court, that at the time of the institution of said suit of Mosely and Bouldin against your orator Lilbourne P. Perry, and the said John M. Perry in this court, your orator Lilbourne P. Perry was not a citizen of Louisiana, but was a citizen of the State of Missouri, and then residing in the city of St. Louis; that your orator, the said Lilbourne P. Perry, was never served with process of citation in said suit, as will appear by the return of the marshall thereon; that your orator, the said Lilbourne P. Perry, was never in any manner notified of the pendency of said suit; that he did not appear therein, or employ any one on his behalf to appear, to defend, or make answer to the same; nor was said suit commenced by attachment of the property of your orator Lilbourne P. Perry.

Wherefore, and by virtue of the premises, your orators aver and show, that the said judgment was wrongfully recovered, as against your orator Lilbourne P. Perry, and that the same is utterly void as against him, and should be declared to be a nullity and of no effect whatsoever, and all the proceedings under the same to be set aside and avoided. And your orators do further aver and state, that even admitting the validity of the said judgment, which your orators utterly deny for the reasons set forth, yet the proceedings under the said writ of fieri facias, which issued upon said judgment, were in each and every particular irregular and illegal; for your orators aver and state, that the requisitions of the law were not complied with; that neither your orator, Lilbourne P. Perry, nor any *on* his behalf, had any notice whatsoever of the seizer of his property; that neither he, nor any one on his behalf, had any notice to appoint an appraiser, nor was any appraiser by him appointed, or by any one for him; that there was no legal appraisement; that there was no legal advertisement or sale of said property. Wherefore, and by virtue of the premises, your orators aver and show, that the proceedings under said writ of fieri facias are and should be declared utterly void, and the same to be set aside, as well for the reasons set forth for the nullity of the said pretended judgment, as for the entire want of compliance of the requisitions prescribed by law for the execution of writs of fieri facias.

And your orators complaining, do further show and state, that even admitting the validity of the said pretended judgment, which they do nevertheless utterly deny, and even admitting the legality of the proceedings under the said writ of fieri facias, which they do also deny, that the said notes or bonds, and the mortgage given by the said Samuel Anderson as security for the same, upon the land and slaves sold to the said Samuel Anderson by your orators, together with the other slaves therein mentioned, never at any time were the exclusive property of your orator Lilbourne P. Perry, but were the property in equal and undivided interests of both your orators, although the said notes or bonds were made payable to

your orator Lilbourne P. Perry, and said act of mortgage was made to your orator Lilbourne P. Perry, yet the interest thereon, as the said Samuel Anderson very well knew, and is estopped from denying, by reason of the written acknowledgments under the hand and seal of said Anderson, in said notes and mortgages, that the same were given for property, and upon property, from your orators jointly purchased, was as much in your orator Clayton Tiffin, as in your orator Lilbourne P. Perry; and the said mortgage was given, as it expressly declares, to secure the payment of said notes or bonds to whomsoever may be the legal holder or owner thereof.

And your orators do further declare and show, that your orator Clayton Tiffin was, from the beginning, the legal holder of an undivided half of said notes or bonds and of said mortgage; and that, forasmuch as the said notes or bonds were made payable to your orator Lilbourne P. Perry, on the 23d of October, A. D. 1839, the first of said notes for $13,333, namely, the note payable on or before the first day of January, 1842, was specially endorsed to the said Clayton Tiffin by your orator Lilbourne P. Perry, through his agent John M. Perry, thereunto duly authorized, whereby your orator Clayton Tiffin became, upon the face of said note, the legal holder and owner thereof, long before the pretended seizure of the same as the property of your orator Lilbourne P. Perry, under said pretended judgment and execution.

And your orators do further state and shew, that said note or bond, which became due and payable on the first of January last, as also the two other notes or bonds, are still on file in the district court for the ninth district, and are claimed by the said Robert Anderson and Nelson F. Shelton, senr., under said pretended seizure by the marshal in said suit against your orators Lilbourne P. Perry and the said John M. Perry; that payment of said note or bond, which became due on the first of January last, was demanded by your orators, through their duly authorized agent, of the said Samuel Anderson; and the said Robert Anderson, and the said Nelson F. Shelton, senr., who claim and possess said land and slaves as third possessors, were duly notified of the said demand, and required to pay the same or deliver up said mortgaged property, in conformity with the provisions of the articles in the civil code and code of practice of Louisiana.

Now, in consideration of the premises herein set forth, and forasmuch as your orators cannot obtain complete and adequate remedy but upon the equity side of this honorable court, so long as the said pretended judgment against your orator Lilbourne P. Perry remains unannulled, and the proceedings under the same, by virtue of which the said Robert Anderson and the said Nelson F. Shelton, sr., pretend to claim and occupy the said mortgaged property as the third possessors thereof are not avoided and set aside, your orators pray that the said judgment, as against your orator Lilbourne P. Perry, be declared and decreed a nullity by this honorable court, and that all

the proceedings under the same be also decreed to be null as against your orators, and the same be set aside and avoided. Your orators do further pray, the premises herein set forth being considered, that this honorable court will further decree that the said Robert Anderson and Nelson F. Shelton, sen'r, who claim said mortgaged property as third possessors thereof, do pay to your orators the full amount of said notes or bonds, or deliver up to your orators the entire property by them possessed and mortgaged as security for said notes or bonds by the said Samuel Anderson; and your orators do further pray that they may have such further relief in the premises as the nature of the case may require, and as may seem meet to this honorable court, and in conformity with the principles of equity and the dictates of good conscience. And may it please this honorable court, the premises considered, to grant unto your orators the writs of subpœna, under the seal of this court, to be directed to the said Samuel Anderson, to the said Robert Anderson, to the said Nelson F. Shelton, sen'r, and to the said Hilery Mosely and William W. Bouldin, or the attorneys in fact or of record of the said Mosely and *Browndin* in the said suit against your orator Lilbourne P. Perry and the said John M. Perry, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear according to law and the course of practice of this honorable court, before this honorable court, then and there to answer all and singular the premises herein set forth, and to stand to, abide by, and perform such order and decree therein as to this honorable court shall seem meet. And now your orators do further state and shew, in conclusion of this their bill, that the said property, mortgaged to secure the payment of their debt of forty thousand dollars, is but an imperfect and inadequate security therefor, and that said land, upon which said mortgage exists, is entirely insufficient to pay and satisfy the same; and your orators have great reason to apprehend, and do in fact apprehend and fear, that the said Robert Anderson and Nelson F. Shelton, sen'r, who are now in actual possession of said land and slaves, will remove said slaves out of the State, and out of the jurisdiction of this honorable court, and that they will part with, sell or dispose of said slaves, before your orators can have the benefit of their mortgage security upon the same under these proceedings before this honorable court. And your orators do also shew and state, that the annual produce and revenue of said mortgaged property is very large, all of which is expended on, or squandered by, said Robert Anderson and the said Nelson F. Shelton, sen'r, without the application of any part thereof towards the payment of the mortgage debt of your orators. These premises being considered, your orators do further pray, that a receiver in chancery be appointed to receive possession of, and administer the said land, and the fruits thereof, and the said negro slaves described in the said act of mortgage which is annexed to this their bill, and the other property attached to said plantation,

according to the rules of chancery in such cases; and that the marshal of the United States for the eastern district of Louisiana be ordered to seize and take into his possession all of said land and the fruits thereof, and the appurtenances thereunto belonging, and said negro slaves described in said act of mortgage, and to deliver the same into the possession of said receiver in chancery. And your orators do also pray for the writ of injunction of this honorable court, directed to Samuel Anderson, Robert Anderson, and Nelson F. Shelton, sen'r, commanding them, and each of them, to refrain from interfering or in any manner intermeddling with the mortgaged property herein claimed during the pendency of this suit.

And [as] in duty bound, your orators will ever pray.

Signed, FRANCIS H. UPTON,
Solicitor for complainants.

And now personally appear Clayton Tiffin and Lilbourne P. Perry, the complainants in this bill, and severally make oath, that all the allegations contained therein are true, and that they verily believe and fear that the said Robert Anderson and Nelson F. Shelton, sen'r, will, before they the said complainants and affiants can have the benefit of the mortgage security for the satisfaction of their just debt under these proceedings, remove the said mortgaged slaves and said moveable property out of the State of Louisiana, and out of the jurisdiction of the honorable circuit court of the United States for the ninth judicial circuit, or that they, the said Robert Anderson and Nelson F. Shelton, sen'r, will dispose of, sell, or part with those slaves and said moveable property, whereby these complainants and affiants will lose their debt, which they seek to recover in these proceedings.

Signed, CLAYTON TIFFIN,
L. P. PERRY.

Sworn to and subscribed before me, Bryan Mullanphy, judge of the 8th judicial circuit of the State of Missouri, at the court house of the city of St. Louis, in county of St. Louis, in the State of Missouri, which city and county last aforesaid are in the said judicial circuit last aforesaid, by Clayton Tiffin, Lilbourne P. Perry, who are both personally known to me, this 21st March, A. D. 1842.

Signed, BRYAN MULLANPHY,
Sole judge of the 8th judicial circuit of the State of Missouri.

STATE OF MISSOURI, *county of St. Louis:*

I, John Ruland, clerk of the circuit court within and for the county aforesaid, certify, that the honorable Bryan Mullanphy, before whom the within affidavit was made, is, and was at the time of taking said affidavit, sole judge of the eighth judicial circuit of the State of Missouri, duly commissioned and qualified; that said attestation is in due form of law; that the signature is genuine; that full

faith and credit are due and should be given to all such his official acts.

In testimony whereof I hereto set my hand, and affix the seal of said court at office in the city of St. Louis, this twenty-first day of March, eighteen hundred and forty-two.

[SEAL.]

Signed, JNO. RULAND, *Clerk.*

And on the same day and year aforesaid, to wit, on the twenty-first day of April, eighteen hundred and forty-two, the following three exhibits, referred to in the plaintiff's bill, were filed, to wit:

Conveyance of Tiffin and Perry to Samuel Anderson.

STATE OF LOUISIANA, *parish of Madison:*

Be it known and remembered, that on this tenth day of April, eighteen hundred and thirty-eight, before me, Richard Charles Downes, parish judge, and ex officio notary public, in and for the parish of Madison aforesaid, duly commissioned and sworn, personally came and appeared Clayton Tiffin, of the city of St. Louis, State of Missouri, and Lilbourne P. Perry, of and residing in this parish, who each said and declared that, for and in consideration of the sum of seventy-five thousand dollars to them in cash paid by Samuel Anderson, of Warren county, State of Mississippi, before signing this act, the receipt whereof they do hereby acknowledge, they, the said Clayton Tiffin and Lilbourne P. Perry, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm, unto the said Samuel Anderson, the whole of that certain tract or parcel of land, situated, lying and being in the parish of Madison aforesaid, on the Mississippi river, about five miles above Vicksburg, it being the same tract of land that was originally confirmed by the board of commissioners of the western district, Orleans territory, to Charles Collins, in section nine, township sixteen, of range fifteen east, and containing six hundred and forty-four acres, be the same more or less, and being the same tract of land which the said Lilbourne P. Perry lately occupied and cultivated as a cotton plantation. To have and to hold the said described tract of land, with all the improvements and advantages thereunto belonging, or in any wise appertaining, unto the said Samuel Anderson, and his heirs and assigns, free from the lawful claims of all persons whomsoever.

And the said appear[ers] further declared that they do hereby sell and convey, with a guaranter of the title to the same, all the following named slaves, unto the said Sam'l Anderson, viz: Anderson, July Ann, and their two children Betsey and William, Sandy, Lethe, and their three children Melinda, Julia and Huchison, George, Rhody and their daughter Amy, Harry, Eliza and their children John, Nancy, Milly, Squire, Peter and Celia, Jesse, Fountaine, Sally, Ned, Jordan, Howder, Elizah, Anna, Francis, Charles, Dick, Bety, Bob, Davy, and Ably. And the said appearers further de-

clared that they do hereby bind themselves and their heirs, the title unto the said land and slaves to the said Samuel Anderson to warrant and forever defend, against the lawful claims of all persons whomsoever. And to these presents also appeared at the same time, Mrs. Ella T. Perry, wife of the said Clayton Tiffin, and Mrs. Mary Ann Tiffin, wife of the said Lilbourne P. Perry, herein duly authorized by their said husbands, who said, and each of them did declare, that in becoming a party to this act they are fully aware of the rights of married women upon the property of their husbands, and on the community of acquets and gaines, and that they do hereby approve of this sale, and do hereby renounce, in favour of the aforesaid Samuel Anderson, all their dotal, paraphernal, and other rights, of whatsoever kind or character, on the said property; and I, the said judge, did then explain to each of the said ladies, to wit, Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin, out of the presence and hearing of their said husbands, the nature of their rights, and to this instrument, as follows: that they have a legal *ortneil* mortgage on all the property of their husbands, and upon that of the community—1st, for the restitution of their dowry, and for the replacing of their dotal property brought in marriage, reckoning from the celebration of the marriage; 2nd, for the replacing of dotal property that may have come to them either by succession or donation, reckoning from the day within [which] the succession was opened, or the donation perfected; 3rd, for the replacing the paraphernal property sold by the wife, or for the reimbursement of the price, when their husbands *has* received the same and appropriated it to *his* own use; and 4th, for the debts which they may have assumed jointly with their husbands, and for their general security when they have had the administration of the wife's paraphernal property. And the said Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin did each declare that they do still approve this act, and that they do hereby renounce all their aforesaid right in favour of the said Samuel Anderson, well knowing that they can never revoke this renunciation, being at this time above the age of twenty-one years.

And to these presents also personally appeared the said Samuel Anderson, who declared that he does hereby accept this sale and conveyance.

And the said Samuel Anderson further declared, that he does hereby waive and dispense with the production of a certificate from the office of the recorder of mortgages, and that he does hereby renounce all right of action that he may have against the undersigned judge in the want of the same.

Done and passed in the parish of Madison, this tenth day of April, eighteen hundred and thirty-eight, in presence of George W.

Grove and Calvin L. Perry, competent witnesses, who have signed with the said appear[ers] and me the said judge.

(Signed) CLAYTON TIFFIN, [SEAL.]
VIRGINIA ELLA TIFFIN,
LILBOURNE P. PERRY,
M. A. PERRY,
SAMUEL ANDERSON.

GEORGE W. GROVE,
CALVIN L. PERRY.

RICHARD CHS. DOWNES, *Parish judge.*

STATE OF LOUISIANA, *Parish of Madison:*

I hereby certify that the foregoing is duly recorded in notarial record book A, pages 12 and 13, in my office. Witness my signature, and the impress of my official seal, this eleventh day of April, eighteen hundred and thirty-eight.

RICHARD CHS. DOWNES, *Parish judge.*

STATE OF LOUISIANA, *Parish of Madison:*

I certify that this foregoing is a true copy of the original act on file and record in my office, this 26th day of January, A. D. 1842.

Witness my signature, and the impress of my official seal.

R. C. DOWNES, *Parish judge.*

Filed April 21, '42. Signed,

HENNEN, *Clerk.*

STATE OF LOUISIANA, *Parish of Madison:*

Be it remembered, that, on this ninth day of July, A. D. eighteen hundred and thirty-nine, before me, Richard Charles Downes, parish judge and ex officio notary public, in and for said State and parish, in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a resident of Hinds county, in the State of Mississippi, who said and declared that, whereas he stands justly indebted to Lilbourne P. Perry, of the city of St. Louis, State of Missouri, in the full sum of forty thousand dollars, and in order to secure the payment of the same he has made and executed his three several promissory notes for the sum of thirteen thousand three hundred and thirty-three dollars each; all which notes are dated the 1st day of March, 1839, and payable to Lilbourne P. Perry, the first of which is payable on or before the first day of January, A. D. 1842, the 2nd on or before the first day of January, A. D. 1843, and the 3rd on or before the first day of January, A. D. 1844; all which notes, after being paraphed by me, judge, to identify them herewith, were delivered to John M. Perry, a duly authorized agent for the said Lilbourne P. Perry, who hereby acknowledges the receipt thereof.

Now, in order to secure the full and punctual payment of each and all the said notes, he, the said Samuel Anderson, does hereby specially mortgage and hypothecate in favor of the said Lilbourne

P. Perry, and in favor of whomsoever may become the legal holder and owner of any of the said notes, all the following described property, lands, and slaves, viz: 1st. A plantation situate in this parish, and lying and fronting on the Mississippi river about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgage by purchase from said Lilbourne P. Perry and Clayton Tiffin, by act passed before me, judge, on the tenth day of April, A. D. 1838. 2nd. The following mentioned negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, July Ann, his wife, twenty-six, Betsey, William, and Everitt, their children, all aged under ten years; Sandy, thirty, Letha, his wife, twenty-eight, and their children, Melinda twelve, Julia, Hutchinson, and Anry, under ten years; George, thirty-four, Rhoda, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordon, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years. The said mortgage hereby binding himself not to sell, alienate, mortgage, or incumber the said mortgaged land and slaves to the prejudice of this mortgage.

I, the said judge, being ex-officio recorder of mortgages for this parish, certify, that there does not exist of record in my office any mortgage whatever upon the above described property in the name of Samuel Anderson. And the said John M. Perry declared that he hereby accepts this mortgage for Lilbourne P. Perry, with all its provisions.

Done and passed on the day and date first above written, in the parish of Madison aforesaid, in presence of Nelson F. Shelton, jr., [and] Ambrose Cramer, competent witnesses, who sign with the parties and me, judge. (The original is signed,)

SAMUEL ANDERSON,
JOHN M. PERRY.

NELSON F. SHELTON,
AMBROSE CRAMER.

RICH'D CHS. DOWNES, *Parish judge.*

STATE OF LOUISIANA, *Parish of Madison:*

I certify that the foregoing is a true copy of the original act on file in my office, and recorded in conventional mortgage book A, pages 27 and 28.

Witness my signature and official seal, this 26th day of Janu-
[SEAL.] ary, A. D. 1842.

(Sig'd,) R. C. DOWNES, *Parish judge.*

Filed 21 April, '42.

$13,333 $\frac{00}{000}$. *Notes.*

On or before the first day of January, 1842, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for land and negroes purchased of Clayton Tiffin and Lilbourne P. Perry; for the true payment of which we bind ourselves, our heirs, &c., firmly by these presents. Given under our hands and seals, this the first of March, 1839.

SAMUEL ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICHARD CHS. DOWNES, [SEAL.]
J. judge parish Madison, Louisiana.

(Endorsed.)

For value received, I assign the within note to Clayton Tiffin, October 22d, 1839.

L. P. PERRY,
For his agent J. M. PERRY.

216. Filed 23d Nov., 1839.

JOHN T. MASON, *Clk.*

$13,333 $\frac{00}{100}$. On or before the first of January, 1843, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for land and negroes purchased of Clayton Tiffin and Lilbourne P. Perry; for the true payment of which we bind ourselves, our heirs, &c., firmly by these presents. Given under our hands and seals, this the first day of March, 1839.

(Signed) SAMUEL ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICH'D CHS. DOWNES, [SEAL.]
J. judge parish Madison, Louisiana.

Endorsed 216. Filed Nov., 1839.

JOHN T. MASON, *Clk.*

$13,333 $\frac{00}{000}$. On or before the first of January, 1844, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for land and slaves purchased of Clayton Tiffin and Lilbourne P. Perry; for the true payment of which we bind ourselves, our heirs, &c., firmly by these presents.

Given under our hands and seals, this the first day of March, 1839.
(Signed) SAMUEL ANDERSON, [SEAL.]
Ne varietur, July 9th, 1839.
RICH'D CHAS. DOWNES, [SEAL.]
J. Judge of parish Madison, Louisiana.
(Endorsed) 216. Filed 28 Nov., 1839.
JOHN T. MASON, *Clerk.*

STATE OF LOUISIANA,
Parish of Madison, ninth district court:

I do hereby certify the foregoing to be a true copy of the notes on file in this office in suit No. 216, Lilbourne P. Perry vs. Samuel Anderson, in said court.

Witness my signature and impress of the seal of said court, the 26th day of January, A. D. 1842.
JOHN T. MASON, *Clerk of said court,*
By E. CAIRBEN, *Deputy Clerk.*
Filed 21 April, HENNEN.

And afterwards, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-two, the following subpœna issued from the clerk's office, to wit:

UNITED STATES OF AMERICA:
The President of the United States, to the marshall for the eastern district of Louisiana, greeting:

You are hereby commanded to summon Samuel Anderson, Robert Anderson, Nelson F. Shelton, sen'r, Hillery Mosely, and William W. Boudin, or their agents or attorneys, to appear before the honorable the judge of the ninth judicial circuit of the United States of America, at a circuit court to be holden on Monday the first day of June, 1842, then and there to answer a bill in chancery filed against them, wherein Clayton Tiffin and Lilbourne P. Perry are plaintiffs, and said Samuel Anderson, et als., are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-sixth year of American independence. [SEAL.]

Signed, DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received April 23d, 1842, and on the 9th day of May, A. D. 1842, served by giving a written notice of this summons to the within named defendants Samuel Anderson, Robert Anderson, and Nel-

son F. Shelton at their residents in Madison parish, La., four hundred and twenty miles from New Orleans, La.

Signed, A. SIDNEY ROBINSON,
United States Marshal.
By J. L. HYNES,
Deputy Marshal.

TIFFIN and PERRY
vs.
SAMUEL ANDERSON. } No. 948—Order.

Minutes—Wednesday, April 13th, '42.

Upon reading the bill herein to be filed, and on motion of Upton, solicitor for complainants, it is ordered by the court that the U. S. marshal for the eastern district of Louisiana, seize and take into his possession the property claimed in the bill and described in the act of mortgage annexed thereto, and deliver the same into the hands and possession of John Butler, or some other good and responsible person, who is appointed to receive in chancery for that purpose, upon the said John Butler, or other person, entering into recognizance with sureties in the sum of twenty thousand dollars, conditioned for the faithful discharge of all the duties of the said John Butler, or other person, incumbent upon him in his aforesaid capacity.

And upon motion it is further ordered, that the writ of injunction against Samuel Anderson, Robert Anderson, and Nelson F. Shelton, senr., do forthwith issue herein in accordance with the prayer of the complainants.

And afterwards, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-two, the following injunction issued from the clerk's office, to wit:

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you enjoin Samuel Anderson, Robert Anderson, and Nelson F. Shelton, senr., and each of them, that they refrain from interfering, or in any manner intermeddling, with the following described property, to wit:

1st. A plantation situate in this parish, and lying and fronting on the Mississippi river about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres more or less, and was acquired by this mortgage by purchase from the said Lilbourne P. Perry and Clayton Tiffin; together with all the stock upon said plantation, and all and singular the furniture, utensils, and appurtenances thereunto connected and belonging.

2d. The following mentioned negro slaves for life attached to said plantation, viz: Anderson, aged about thirty-six years; July-

ann, his wife, twenty-six; Betsy, William and Everett, their children, all aged under ten years; Sandy, thirty; Letha, his wife, twenty-eight; and their children Malinda, twelve, Julia, Hutchison and Anny, under ten years; George, thirty-four; Rhoda, his wife, thirty four; and Ary, their daughter thirteen; Thuny, forty; Eliza, his wife, thirty; and their children, John, seventeen, Nancy, thirteen, Milby, Squire, Peter, Celia and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordon, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Harry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two; her child Rachel, an infant; and Overton, aged about twenty-five years, until the final decision of the bill in chancery of Clayton Tiffin and Lilbourne P. Perry vs. Samuel Anderson et al.

And hereof make due return according to law.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-second day of April, [SEAL.] A. D. 1842, and sixty-six year of the independence of the United States of America.

DUNCAN N. HENNEN, *Clk.*

And afterwards, to wit, on the same day in the year of our Lord one thousand *eighteen* hundred and forty-three, the following writ of possession was issued from the clerk's office, to wit:

The President of the United States of America to the marshall of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to deliver unto John Butler, or some other suitable and proper person, as receiver in chancery, the following described property, to wit:

1st. A plantation situate in this parish and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district of Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres more or less, and was acquired by this mortgage by purchase from the said Lilbourne P. Perry and Clayton Tiffin; together with all the stock upon said plantation, and all and singular the furniture, utensils, and appurtenances thereunto connected and belonging.

2d. The following mentioned negro slaves for life attached to said plantation, viz: Anderson, aged about thirty-six years; July-ann, his wife, twenty-six; Betsy, William and Everett, their children, all aged under ten years; Sandy, thirty; Letha, his wife, twenty-eight; and their children, Malinda, twelve, Julia, Hutchin-

son, and Anny, under ten years; George, thirty-four; Rhoda, his wife, thirty-four; and Ary, their daughter, thirteen; Harry, forty; Eliza, his wife, thirty; and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordan, thirty-six; Howden, twenty-five; Elizah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two; her child Rachel, an infant; and Overton, aged about twenty-five years, upon said John Butler, or other persons entering into bond with sureties in the sum of twenty thousand dollars, conditioned for the faithful discharge of all his duties *a* receiver aforesaid.

And hereof make due return according to law.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-second day of April,
[SEAL.] A. D. 1842, and sixty-six year of the independence of the United States of America.

(Signed) DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Received, April 23d, 1842, and on the ninth day of May, A. D. 1842, executed, by delivering into the possession of Jno. Butler, the within named receiver, all the property of defendants named in this writ, which could be found.

(Signed) A. SIDNEY ROBINSON, *United States Marshal,*
By J. L. HYMES, *Deputy Marshal.*

And afterwards, to wit, on twenty-ninth day of August, in the year of our Lord one thousand *eighteen* hundred and forty-two, the following bond was filed in the clerk's office, to wit:

Know all men by these presents that we, John Butler, Wm. Amorutte, and J. J. Amorutte, are held and firmly bound unto A. Sidney Robinson, United States' marshall for the eastern district of Louisiana, in the full sum of twenty thousand dollars lawful money of the United States, and for the punctual payment of the above named amount, we severally bind ourselves, our heirs and assigns forever; and further to secure the punctual discharge of the above obligation, we hereby confess judgment in favor of A. Sidney Robinson for the sum of twenty thousand dollars.

The condition of the above obligation is such, that if the above named John Butler, shall well and truly discharge his duty as receiver in chancery, as named in a certain writ issued from the circuit court of the United States for the eastern district, and ninth circuit of La., in favor of Clayton Tiffin and Lilbourne P. Perry vs.

1522.

Samuel Anderson et als., and numbered 948, and the property therein described safely keep until further order of court, then the above obligation to be void and null, otherwise to remain in full force and effect.

(Signed) JNO. BUTLER,
W. AMORRETT,
J. J. ARNONETT.

Witness, May 9th, 1842.
Signed, A. PIERRE,
JOSEPH L. HYNES.

And afterwards, to wit, on the 4th day of June, in the year of our Lord one thousand eight hundred and forty-two, the following plea, demurrer, and answer of Samuel Anderson was filed in the clerk's office.

To the honorable circuit court of the United States, ninth circuit in and for the eastern district of Louisiana, the plea, demurrer, and answer of Samuel Anderson to the bill of complaint, filed in this honorable court against him and others by Clayton Tiffin and Lilbourne P. Perry, respectfully shows:

That the defendants Robert Anderson, Nelson F. Shelton, Hilery Mosely, and William W. Bouldin, are all citizens of the State of Virginia and are not citizens of the State of Louisiana; that this honorable court has no jurisdiction over them at the suit of plaintiffs.

He further alleges that the plaintiffs are not entitled to the relief claimed against him without making them parties, for which reason he denies that this court have jurisdiction of this case, and prays that their bill of complaint may be dismissed at their costs.

If, however, the plea should be overruled, he demurs to the plaintiffs' bill of complaint, because it shows no equity in favor of plaintiffs against him, and for all the causes of complaint against him, if true, plaintiffs have plain and adequate remedy at law; wherefore he prays that plaintiffs' bill [of] complaint may be dismissed at their costs.

If, however, his demurrer should be overruled and not otherwise, then your respondent answers to the bill of complaint filed against him.

That it is true he purchased the plantation and slaves as stated in the bill of complaint on the 10th of April, 1838. He believes and so charges that John M. Perry had an interest in said land and slaves, and was the agent of the venders in the sale of the same, and to receive the price thereof, and he alleges that it was perfectly understood and agreed between him and the said vendors and the said John M. Perry, that the cash payment mentioned in the bill of sale should consist of two notes of John M. Perry and Lilbourne P. Perry, mentioned in the bill of complaint, and held by your respondent against them, and of the note of Hugh R. Austin, J. B.

Ragan, and *and* Wylie Bohanman for eighteen thousand two hundred and eighty-two dollars and sixty-five cents, payable to your respondent on the first day of April, 1839; that the said notes should be received in cash, and without any further recourse upon your respondent; that without this agreement he never would have purchased the land and slaves. He alleges that the value of the note of eighteen thousand two hundred and eighty-two dollars and sixty-five cents was known to the vendors of the land; also, the character of the drawers; that the venders had particular objects in taking the note expressed at the time; that an extravagant price was stipulated for the property sold in consideration of their taking the note as cash, which was for these reasons agreed to, and the amount acknowledged in the bill of sale as cash received, and it is fraudulent and iniquitous for plaintiffs to make any claim upon him on account of said note, or cash payment. And your respondent alleges, that plaintiffs are estopped by their deed from pretending that the payment of the price of said property was not made to their satisfaction.

Your respondent admits the delivery of the three notes secured by mortgage, amounting to forty thousand dollars, made payable to the complainant, Lilbourne P. Perry, for the credit part of the price of the property. He alleges that he was required by the agent of complainants, John M. Perry, to make them payable to Lilbourne P. Perry.

Your respondent denies that Clayton Tiffin was entitled to a moiety of said notes, but alleges that he understood from the venders and their agent, John M. Perry, and who, he believes and alleges, *he* was a co-vendor in fact, though not apparently; that said Clayton Tiffin had an interest of about one-third in the notes, amounting to forty thousand dollars, secured by mortgage; but your respondent alleges that, at the time of the sale, to wit, on the 10th day of April, 1839, and before the mortgage notes could be executed and delivered as an acknowledgment of the amount due to said Tiffin for his interest in the property, John M. Perry and your respondent gave him three notes, one for the sum of four thousand five hundred and fifteen dollars and ten cents, payable the 1st of March, 1839, and two others, each for the sum of three thousand seven hundred and seventy-five dollars, one payable the 1st of March, 1840, and one payable the 1st of March, 1841; which notes were to be given up, and one of the mortgage notes substituted in lieu of them; but your respondent alleges that the said Clayton Tiffin never did give up and cancel the said three notes, but kept the same, and instituted suit upon them in this honorable court against your respondent, and has obtained judgments upon them, and also permitted Lilbourne P. Perry, the payee, to keep and sue him upon the three mortgage notes.

Your respondent alleges that the consideration of the mortgage notes, so far as Clayton Tiffin had an interest, entirely failed; that

by his bad faith and iniquitous conduct he has lost all claim upon the same, and has no recourse, but upon the joint notes of John M. Perry and your respondent, and his judgments against your respondent.

Your respondent alleges that Lilbourne P. Perry having instituted suit against him as the owner of the three mortgage notes amounting to forty thousand dollars, he purchased and paid for them in good faith, when seized and sold on the 4th of January, 1840, by the marshal, under execution from the honorable court in the suit of Mosely and Bouldin against Lilbourne P. Perry and John M. Perry.

Your respondent denies all the allegations of illegality in the proceedings in said suit, and on the execution under it, and alleges that the same were legal and binding upon said Lilbourne P. Perry. He further alleges that it has been decided by the district court of the 9th district of Louisiana, for the parish of Madison, in the said suit of Lilbourne P. Perry against your respondent, that the said notes and mortgage were extinguished by confusion.

Your respondent alleges that in said suit of Mosely and Boulden against John M. Perry and Lilbourne P. Perry, the said Lilbourne P. Perry appeared, by an attorney at law duly licensed, to defend the same; that he believes and so charges that John M. Perry was his agent in the defence of said suit; that he was the agent as to the notes seized and sold under execution in said suit, and, your respondent believes and so charges, had a partnership interest in the notes sued upon by Mosely and Bouldin, and in the notes of your respondent, seized and sold in execution of the judgment rendered in said suit.

And your respondent alleges that all said proceedings in the suit of Mosely and Bouldin against said Perry, and the said judgment in the suit of Lilbourne P. Perry against your respondent, are binding upon the said Lilbourne P. Perry, and also upon the complainant Clayton Tiffin, and neither of them have a right in law or equity to annul them in this court as to your respondent.

And your respondent alleges, that on faith of said proceedings, Nelson F. Shelton and Robert Anderson instituted suit in the month of April, 1841, in the district court of the 9th district of the State of Louisiana, for the parish of Madison, on mortgage in their favor given to them by your respondent; and on the 14th day of June, 1841, by virtue of an order of seizure and sale in said suit, after due proceedings, caused the plantation and slaves, mentioned in plaintiffs' bill of complaint, to be sold by the sheriff of said parish. The said Nelson F. Shelton and the said Robert Anderson purchased the said property at said sale, and have possessed the same in good faith ever since, until taken possession of by the receiver of this court, appointed in this suit: all of which will appear by the record which your respondent will exhibit.

Your respondent specially and particularly denies all fraud, con-

spiracy, or combination on his part with Robert Anderson or Nelson F. Shelton, or others, to defraud or injure the complainants, as charged in their bill of complaint or otherwise. He *denes* not know that it is material for him to admit or deny anything else in the plaintiffs' bill of complaint, and denies all claim on their behalf against him.

Wherefore, he prays judgment in his favor against them, and prays that their bill of complaint may be dismissed with costs, and he prays for all other and further relief which justice, equity, and the nature of his case may require.

As in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Solicitor for Respondent.

Samuel Anderson, the defendant, being duly sworn, doth depose and say, that the statements in his foregoing answer, *a* true to the best of his knowledge and belief.

(Signed) SAMUEL ANDERSON.

Sworn to and subscribed, at New Orleans, this 3d day of June, 1842, before—

(Signed) DUNCAN N. HENNEN, *Clerk.*

And afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty-two, the following answer of Robert Anderson was filed in the clerk's office, to wit:

To the honorable circuit court of the United States of the ninth circuit, in and for the eastern district of Louisiana, sitting in equity.

The answer of Robert Anderson to bill in equity, exhibited against himself, Samuel Anderson, Nelson F. Shelton, senr., Hilery Mosely, William W. Bouldin, by Clayton Tiffin and Lilbourne P. Perry, in the circuit court of the United States, New Orleans, for the ninth judicial circuit, eastern district of Louisiana, answers and says, that his residence in the State of Louisiana is temporary; that he came here for the purpose of securing a debt due him from Samuel Anderson and Nelson F. Shelton, senr., and intended at the time of coming to the State of Louisiana, and still intends, to return to the State of Virginia, as soon as he can with safety to his interests here. Has no intention of becoming a citizen of the State of Louisiana. That on his arrival in the State of Louisiana, which was some time in the month of February, 1840, he was infor[m]ed that the bonds and mortgage given by Samuel Anderson to secure the payment of the money for the purchase of the property in the plaintiffs' bill mentioned, had been sold by the marshall of the United States court for the eastern district of Louisiana, whereby the debt and lien on said property were extinguished; that on the day of March, 1840, a mortgage on the property named in plaintiffs' bill was executed before Alfred J. Lomers, a notary public, in and for the

parish of Madison, by the said Samuel Anderson, to Robert Anderson and Nelson F. Shelton, senr., defendants in the above named suit, to secure the payment of the sum of money therein named; that some time in the year 1841, the property named in said mortgage was sold by the sheriff of the parish of Madison, and was bought by Nelson F. Shelton, senr., and this respondent: all of which will more fully appear by reference to copies of the mortgage, the order of seizure and sale, and the other proceedings had thereon; all of which are prayed to be taken as part of this respondent's answer.

This respondent further states, that the sale of the land and negroes, named in plaintiffs' bill, to Samuel Anderson; the cash payment therefor; the execution of these bonds for the purchase money and mortgage, as security therefor, by said Samuel Anderson to Lilbourne P. Perry; the plaintiff's deed to Samuel Anderson for the *bond* and negroes sold to him by said plaintiff; the sale of the bonds and mortgages executed to Lilbourne P. Perry, one of the plaintiffs, by Samuel Anderson, at the suit of Hilery Mosely and William W. Bouldin against said Lilbourne P. Perry and John M. Perry, took place before *his*, this respondent, arrived in the State of Louisiana. That this respondent derived his information in relation to these proceedings, which took place before his, respondent's, arrival in Louisiana, principally from Samuel Anderson, and his counsel, and a portion of the records.

This respondent further states, that at the late term of the district court of the parish of Madison, State of Louisiana, holden by judge Envy, the bonds for forty thousand dollars, named in plaintiffs' bill, and given by Samuel Anderson to Lilbourne P. Perry, for the credit portion of the sum due for the purchase of lands and negroes in plaintiffs' bill mentioned, was adjudged and ordered to be given up to said Samuel Anderson: all which will *now* fully appear by reference to an authenticated copy of the record of said judgment and proceedings had thereon, to which this respondent refers, and prays to be taken as part of this his answer.

In conclusion, this respondent denies most positively any fraud, conspiracy, or pretentions, as charged in plaintiffs' bill; but on the contrary, that his whole conduct in this business has been in good faith; that his claim is a just one, and that he has not, nor has he ever had, any intention of removing the property out of the State, or of injuring or squandering it in any way whatever. This respondent asks the court to dissolve the plaintiffs' injunction, and to set aside the whole proceedings thereon, and to be dismissed with his costs and charges.

(Signed) ROBT. ANDERSON.

Sworn to and subscribed before me, this 30th day of May, A. D. 1842.

(Signed) GEO. M. GROVE,
J. P. P. Madison.

And afterward, to wit, on the 4th day of June, in the year of our Lord one thousand eight hundred and forty-two, the following answer of Nelson F. Shelton was filed in the clerk's office, to wit:

To the honorable circuit court of the United States, of the ninth circuit, in and for the eastern district of Louisiana, the plea, demurrer, and answer of Nelson F. Shelton to the bill of complaint filed in this honorable court against him, Robert Anderson, Samuel Anderson, and others, respectfully shews:

That your respondent alleges, that he is not a citizen of the State of Louisiana, but is a citizen and inhabitant of the State of Virginia, and cannot be sued by the complainants, citizens of the State of Missouri, in this honorable court.

He further alleges, that Robert Anderson, who is sued as a co-defendant with him, is not a *not a* citizen of Louisiana, but is a citizen of the State of Virginia.

He further alleges, that Hillery Mosely and William W. Boulden, who are made parties defendant to this suit, and without making (whom) parties, the judgment, execution, and sale, made at their suit in this court cannot be set aside, are citizens of the State of Virginia, for which reason, your respondent pleads, that this honorable court can have no jurisdiction over them at the suit of the complainants, citizens of the State of Missouri.

Wherefore, your respondent prays that this suit be dismissed for want of jurisdiction in this court over the parties defendant at the suit of complainants. And if these pleas should be overruled, then, and not otherwise, he demurs to the plaintiffs' bill of complaint, on the ground that they shew no equity on the face of the bill, and that they have a plain and adequate remedy at law for all the causes of complaint alleged by them, as will appear by the consideration of their bill. And if this demurrer be overruled, then, and not otherwise, your respondent answers, that he specially and positively denies all fraud, conspiracy, or combination on his part with Samuel Anderson and others, to defraud or injure the complainants, as charged in their bill of complaint, or otherwise.

He admits the sale mentioned in plaintiffs' bill of complaint, from the complainants to Samuel Anderson, made the 10th day of April, 1838, before the parish judge of Madison, of the plantation and slaves therein described, and now in controversey; and he alleges that he believed, and still believes, that the payment of the price of said property had been satisfied by Samuel Anderson to his vendors, except the three notes hereafter mentioned.

Your respondent alleges, that the three notes mentioned in the bill of complaint for thirteen thousand three hundred and thirty-three dollars and thirty-three cents and one-third cent each, made by Samuel Anderson in favor of Lilbourne P. Perry, amounting to forty thousand dollars, and the mortgage to secure the same, were executed and given by Samuel Anderson to Lilbourne P. Perry, in payment

of the balance due of the price of said property. He alleges that John M. Perry, the agent of Lilbourne P. Perry, being in possession of said notes, brought suit upon them against Samuel Anderson, and made oath that they were the property of said Lilbourne P. Perry, as appear by the record of the district court of 9th district of the parish of Madison, in suit No. 216 of the docket of said court, which your respondent will produce.

Your respondent alleges that the said three notes being on file in said suit, was seized by the marshall of this honorable court, under an execution issued in the suit wherein Mosely and Bouldin were plaintiffs and John M. Perry and Lilbourne P. Perry were defendants; and, after due and legal proceedings, were sold by said marshall on the 4th day of January, 1840, when the said Samuel Anderson became the purchaser thereof, and by said purchase the debt and mortgage was extinguished by confusion.

Your respondent denies all the allegations of illegality in the proceedings of said suit, and on the execution under it; and alleges that the same were legal and binding upon said Lilbourne P. Perry.

He further alleges that it has been decided by the district court of the ninth district of Louisiana, for the parish of Madison, in the said suit of Lilbourne P. Perry against Samuel Anderson, that the said notes and mortgage were extinguished by confusion.

Your respondent alleges that, in the said suit of Mosely and Bouldin against John M. Perry and Lilbourne P. Perry, the said Lilbourne P. Perry appeared by an attorney at law duly lincensed to defend the same; that he believes, and so charges, that John M. Perry was his agent in the defence of said suit; that he was the agent as to the notes seized and sold under execution in said suit; and your respondent believes, and so charges, had a partnership interest in the notes sued upon by Mosely & Bouldin, and in the notes of Samuel Anderson, seized and sold in execution of the judgment rendered in said suit.

And your respondent alleges that all said proceedings in the suit of Mosely & Boulden against said Perry, and the said judgment in the suit of Lelbourne P. Perry against Anderson, are binding upon the said Lilbourne P. Perry, and also upon the complainant Clayton Tiffin; and neither of them have a right in law or equity to annul them in this court as to your respondent.

And your respondent alleges that, on the faith of said proceedings, he, with Robert Anderson, instituted suit in the month of April, 1841, in the district court of the 9th district of the State of Louisiana, for the parish of Madison, on mortgages in their favor, given to them by Samuel Anderson; and on the 14th day of June, 1841, by virtue of an order of seizure and sale in said suit, after due proceedings, caused the plantation and slaves mentioned in plaintiff's bill of complaint to be sold by the sheriff of said parish, and your respondent and the said Robert Anderson purchased the said property at said sale, and have possessed the same in good

faith ever since, until taken possession of by the receiver of this court appointed in this suit; all of which will appear by the record which he will exhibit.

Your respondent alleges that he became a co-purchaser of said property in good faith, and fully believing the debt and mortgage in favor of Lilbourne P. Perry, and all claim of said Clayton Tiffin, if he ever had any, against said property extinguished; and your respondent expressly denies that there is any equity in favor of complainants, entitling them to be preferred to his legal and equitable title to said property, free from all incumbrances or claim of complainants.

Your respondent is not aware of any other matter in the plaintiffs' bill of complaint, which it is material for him to admit or deny. And he alleges that the plaintiffs, by causing a receiver to be placed in possession of his plantation and slaves, will cause him damage to the amount of ten thousand dollars.

Wherefore he prays, that if this honorable court takes jurisdiction of the case, that he may have a decree in his favor against all the demands of the plaintiff, and that your honor would decree *the* he recover ten thousand dollars damages, which he has most wrongfully sustained by plaintiffs' proceedings, and all costs, and that your honor would afford all other and further relief, which justice, equity, and the nature of the *cas* may require.

As in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Solicitor.

Nelson F. Shelton, being duly sworn, doth depose and say, that the statements in the foregoing answer are true, to the best of his knowledge and belief.

(Signed) NELSON F. SHELTON.

Sworn to and subscribed at New Orleans, this 3d of June, 1842, before me,

(Signed) DUNCAN N. HENNEN, *Clk.*

And afterwards, to wit, on the 6th day [of] June, in the year of our Lord one thousand eight hundred and forty-two, the following rule and grounds *was* filed in the clerk's office, to wit:

LILBOURNE P. PERRY and CLAYTON TIFFIN,
vs.
NELSON F. SHELTON, SAMUEL ANDERSON, and ROBERT ANDERSON. } In chancery.

Isaac T. Preston, solicitor for the respondents, prays that the complainants shew cause, on Saturday, the 11th June inst., at 10 o'clock A. M., why the order appointing a receiver in this case should not be rescinded on the following grounds:

1st. That the court have no jurisdiction of the case, as appear on the face of the bill.

2nd. That the bill is not sworn to before a competent magistrate.

3rd. That the bill does not show sufficient cause, or make out a case, for the appointment of a receiver.

4th. That no security is given for the damages respondents will suffer.

5th. That the receiver is not a responsible person.

Marshal's return.

Received 6th June, 1842, and same day served a copy of the within rule in chancery, by handing the same to him, F. H. Upton, esq., in person.

(Signed) A. SIDNEY ROBERTSON,
U. S. marshall.
By WM. K. STYLES,
Deputy U. S. M.

And afterwards, to wit, on the 9th day of June, in the year of our Lord one thousand eight hundred and forty-two, the following rule for continuance was filed in the clerk's office, to wit:

UNITED STATES CIRCUIT COURT,
Ninth circuit and eastern district of Louisiana:

LILBOURNE P. PERRY & CLAYTON TIFFIN,
vs.
SAMUEL ANDERSON et als. } 948.

On motion of I. T. Preston, esquire, it was ordered that the rule taken on plaintiffs, to show cause why the appointment of receiver should not be rescinded on grounds filed 6th June, and which was fixed for trial on Saturday, be continued over to Monday, the 13th June, at ten o'clock A. M.

Marshal's return.

Received, June 9th, 1842, and same day served a copy of the within order on F. Upton, esqr., by leaving the same at his office.

(Signed) WM. K. STILES, *U. S. M.*

And afterwards, to wit, on the 13th day of June, in the year of our Lord one thousand eight hundred and forty-two, the following entry of record was made, to wit:

The rule taken in this case on the complainants, to shew cause why the appointment of a receiver should not be rescinded, came on this day for a hearing, and was argued by Messrs. Upton for the complainants, and I. T. Preston, esq., for the defendants; when, upon the suggestion of the court, the following motion was substituted in place of the one under consideration:

On motion of I. T. Preston, esqr., of counsel for the defendants, Robert Anderson and Nelson F. Shelton, it is ordered that the solicitors of complainants shew cause on Monday, the 27th of June, 1842, why—

1st. Complainants should not give security, in such sum as the court may judge equitable, to secure the said defendants against all damages they may suffer in consequence of the appointment of a receiver and the injunction issued in this case.

2. Why the said defendants should not be permitted to retain possession of the property on giving security in such sum and on such condition as the court may require.

3rd. Why the security given by the receiver should not be increased so as to make it satisfactory to defendants.

Minutes.

Monday, June 27th, 1842.

CLAYTON TIFFIN & LILBOURNE P. PERRY,
vs.
SAMUEL ANDERSON et als. } No. 948. In equity.

On the trial of the motion in this case fixed for trial this day, it is ordered, after hearing the testimony and arguments of counsel for plaintiffs, and the defendants Nelson F. Shelton and Robert Anderson, that the said defendants be put, by the marshall of this court, into possession of the plantation, slaves, and moveable property heretofore placed in the possession of the receiver, John W. Butler, on their giving bond, with security, to be approved of by the court, in the sum of twenty-five thousand dollars, conditioned that said defendants shall deliver over to the marshall of this court said property, in execution of any decree or judgment which may be rendered in the case.

And afterwards, to wit, on 27th June, '42, the following testimony was filed and read in evidence:

UNITED STATES OF AMERICA,
Eastern district of Louisiana, city of New Orleans, ss:

Be it remembered, that on this twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-two, before me, Duncan N. Hennen, a commissioner duly appointed on the 29th February, 1836, by the district court of the United States, in and for the eastern district of Louisiana, and also appointed by the circuit court of the United States for the ninth circuit and eastern district of Louisiana, on the fifth day of January, 1841, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed Feb'y 20, 1812, and the act of Congress, entitled 'An act in addition to an act entitled 'an act for the more convenient takingof affidavits and bail in civil causes depending in the courts of the United States," passed March 1, 1817, and the act passed Sept. 24, 1789, entitled "An act to establish the judicial courts of the United States," personally appeared W. Amorrett, John Butler, and A. S. Robertson, residing in this city, witnesses of sound mind and lawful age, for the plaintiffs, in a civil suit no[w] pend-

ing in the circuit court of the United States, in and for the eastern district of Louisiana, wherein Tiffin and Perry are complainants, and S. Anderson & als. are defendants, and the said Wm. Armorrett being by me first carefully examined, and cautioned, and sworn on the holy evangelists of Almighty God to testify the whole truth, and nothing but the truth, did depose and say: That he is acquainted with John Butler, of the parish of Madison, in this State; said Butler is considered as a prudent and skilful man in the management of his affairs. Said Butler is a man of integrity, and trustworthy, as much so as any man; deponent has been acquainted with said Butler about three years, and has had occasion to put property in his charge as receiver in the suit of Farmers' Bank of Virginia vs. King & Hunter, deponent considers Butler as entirely free from debt, does not believe he owes any thing, and there is nothing on record shewing that he owes any thing; deponent is so intimately acquainted with said Butler, that if he was in debt he would be apt to know it; as matter of reputation in the parish, thinks that said Butler is good for thirty thousand dollars, he having a fine property, which is clear of all incumbrance; said Butler has a plantation in the parish of Madison of about seven hundred acres, which is worth on an average $25 per acre.

Deponent, and his brother James Ira, are worth thirty thousand dollars after payment of their debts; deponent owes nothing, and believes his brother owes nothing.

Cross examined by Isaac T. Preston, esq.

Deponent never heard of any one being dissatisfied with said Butler's administration of the property put into his hands in the case of the Farmer's Bank of Virginia, except from Lewis A. Collier, who wanted to see the cotton in Butler's hands as receiver, to appropriate the proceeds to his (Collier's) use, and to take some stock from the place on which Butler was receiver, which said Butler refused to allow Collier to do.

Butler was allowed as receiver $550, exclusive of the amount paid him for overseeing the other property for about the space of nine months; said Butler rents out his own plantation; deponent knows that said Butler has some negroes, but does not know how many; witness and his brother have no property that is assessed on the tax roll. John M. Perry, the father, has for a long time, for several years, *has* been acting in the parish of Madison, as the agent of his son, Lilbourne P. Perry, and his son-in-law, Clayton Tiffin; deponent does not know that either John M. Perry, Clayton Tiffin, or Lelbourne P. Perry had any property in the State, other than the claim set up in this suit; deponent cannot estimate the damage to accrue to defendants by being dispossessed of the land and negroes in controversy, but thinks that hardly any damage could accrue, while it is in the hands of said Butler as receiver, and the crops are attended to; deponent knows nothing derogatory

to the character of John M. Perry; he has known him for many years here and in Virginia, where he occupied some judicial station, and stood high in the estimation of the community.

(Signed,) W. ARMORRETTE.

And Ira Butler, an other witness in behalf of the complainants, being duly and carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, did depose and say, that John Butler, of Madison, is a brother of all present; said Butler is the owner of about seven hundred acres of land in the said parish of Madison, which land is as good as any land in the said parish; said Butler has $600 and two negroes in the hands of deponent; deponent is acquainted with Wm. Amorrett, the above witness, and has never heard his character for veracity in any manner impeached; deponent has never seen his brother's title to the above property, but believes he owns the said land, and he knows that his brother has leased it, and has been in possession thereof.

(Signed,) IRA BUTLER.

A. Sidney Robertson being also duly and carefully examined, and cautioned, and sworn, to tell the truth, and nothing but the truth, in the said cause, saith that he is well acquainted with Wm. Amorett, who has already testified in this cause, and deponent would, without hesitation, place confidence in said Amorrett's declarations and statements as truth; said Amorrett has the reputation in his business dealings of being correct and prudent.

(Signed,) A. SIDNEY ROBERTSON.

UNITED STATES OF AMERICA,

Eastern district of Louisiana, city of New Orleans, ss:

I, Duncan N. Hennen, a commissioner duly appointed by the circuit court of the United States, for the eastern district and ninth circuit of Louisiana, and by the district court of the United States, for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "an act in addition to an act, entitled 'an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817, and the act passed Sept. 24, 1789, entitled an act to establish the judicial courts of the United States,'" do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witnesses, Amorrett and Butler, are about to depart more than one hundred miles from the city of New Orleans.

I further certify, that a notification was made out and served on defendant's agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit,

and that a notification of the time and place of taking of the said deposition was made out and served on defendant's attorney.

I further certify, that on the 23d day of June, A. D. 1842, I was attended by the attorneys of the respective parties and the witnesses, and the witnesses were by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witnesses, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding it to the court for which it was taken. I further certify, that I am not of counsel or attorney to either of the parties in said deposition mentioned, or in any way interested in the event of said civil cause depending between Perry and Tiffin et als. and Anderson.

In testimony whereof, I have hereunto set my hand and seal, this 23d day of June, in the year of our Lord one thousand eight hundred and forty-two.

DUNCAN N. HENNEN, [L. S.]
U. S. commissioner circuit and district courts U. S. for the eastern district of Louisiana.

And afterwards, to wit, on the 28th day of June, in the year of our Lord one thousand eight hundred and forty-two, the following order of court was filed in the clerk's office, to wit:

CLAYTON TIFFIN and LILBOURNE P. PERRY vs. SAMUEL ANDERSON et als. } No. 948.

On motion of Isaac T. Preston, esq., of counsel for the defendants Robert Anderson and Nelson F. Shelton, it was ordered that Bernard McKiernan and Hugh W. Dunlap, whom they offer as security, under the order of this court made yesterday, be approved as their securities, and the property in the hands of the receiver be delivered over to Robert Anderson and Nelson F. Shelton, on their executing bond with said securities in the sum of twenty-five thousand dollars, conditioned that they deliver up said property on execution of any judgment or decree that may be rendered in this case.

Marshal's return.

Received, June 28th, 1842, and on the eighth day of July, 1842, complied with the within order of court, by taking bond in the sum of twenty-five thousand dollars from the within named approved securities, four hundred and twenty miles from New Orleans.

A. SIDNEY ROBERTSON, *U. S. M.*
By J. L. HYNES, *D. U. S. M.*

Marshal's return.

Received, June 28th, 1842, and on the eight day of July, 1842, complied with the within order of court, by putting the defendants, Nelson F. Shelton and Robert Anderson, into possession of the property, heretofore placed in the hands of John Butler, receiver in chancery, four hundred and twenty miles from New Orleans.

A. SIDNEY ROBERTSON, *U. S. M.*
By J. L. HYNES, *D. U. S. M.*

And afterwards, to wit, on the 29th day of August, in the year of our Lord one thousand eight hundred and forty-two, the following bond was filed in the clerk's office, to wit:

Know all men by these presents that we, Nelson F. Shelton and Robert Anderson as principles, Bernard McKennan, Hugh W. Dunlap as securities, are held and firmly bound unto Algernon Sidney Robertson, marshall of the United States for the eastern district of Louisiana, in sum of twenty-five thousand dollars ($25,000) lawful money of the United States, for the payment whereof to the said Algernon Sidney Robertson, marshall, his heirs, executors, administrators, assigns or successors in office, we jointly and severally bind ourselves, our respective heir, executors, and administrators, firmly by these presents. Witness our names and seals hereunto affixed by us in the parish of Madison, State of Louisiana, this eighth day of July, one thousand eight hundred and forty-two.

Whereas an order was lately issued out of the honorable the circuit court of the United States, for the eastern district of Louisiana, at the suit of Clayton Tiffin and Lelbourne P. Perry vs. Samuel Anderson et als., and numbered nine hundred and forty-eight on the docket of said court, commanding the said marshall to put Nelson F. Shelton and Robert Anderson in possession of the plantation, slaves, and moveable property, heretofore placed in the possession of the receiver, John W. Butler, to wit: a certain plantation situate in the parish of Madison, State of Louisiana, and lying and fronting on the Mississippi river, about five miles from Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district of Orleans territory to Charles Collins, in section 9, township 16, range 15 east, containing six hundred and forty acres, more or less, and was acquired by this mortgage, by purchase from the said Lelbourne P. Perry and Clayton Tiffin, together with all the stock on said plantation, viz: seventeen (17)mules, four horses, seven harrows, twenty-two ploughs, one ox waggon, two carts, forty head of hogs, forty head of cattle, and any other stock or implements of agriculture that may belong to said plantation. And all the following named negro slaves for life, employed on and attached to said plantation, viz: Anderson, aged about 36 years; Indian, his wife, 26, and their children, Betsey, William, Edward, and Patsey; Sandy, 30, Lethe, his wife, 28, and their children, Malinda, 12, Julia,

Hutchinson; George, 34, Rhoda, his wife, 34, and Amy, their daughter, 13; *Mary*, 40, Eliza, his wife, 30, and their children, John, 17, Milly, Squire, Peter, Celia, Henry; Jesse, 20; Fountain, 40; Sally, 30; Ned, 40; Jordan, 36; Eliza, 23; Charles, 15; Dick, 24; Betsy, 22, and child; Bob, 36; Alby, 40; Katy, 45: Joe, 28; Louisa, 18, and child Robert; Matilda, 19; Sarah, 20; Jackson, 20; Harrison, 21; Paris, 13; Jane Johnson, 18; Jane Miller, 22, and her child Rachael; and Overton, 25 years old; together with all the household and kitchen furniture and improvement.

Which said above described property has been put into the possession of the said Nelson F. Shelton and Robert Anderson accordingly.

Now the condition of the above obligation is such, that if the said Nelson F. Shelton and Robert Anderson shall well and truly deliver over to the marshal of said court the foregoing described property, whenever required so to do, in execution of any decree or judgment which may be rendered in the said case, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Signed) NELSON F. SHELTON, [L. S.]
ROBERT ANDERSON, [L. S.]
B. McKIERMAN, [L. S.]
H. W. DUNLAP. [L. S.]

Signed, sealed, and delivered in the presence of,
JOHN E. HUNTER,
JOSEPH L. HYNES.

And afterwards, to wit, on the 5th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following rule on defendants was filed in the clerk's office, to wit:

LELBOURNE P. PERRY et als.
vs. } In chancery.
R. ANDERSON et als.

On motion of Upton, solicitor for complainants, it is ordered, that the defendants, Samuel Anderson, Nelson F. Shelton, and Robert Anderson, do shew cause on Tuesday, the 12th July, at 10 o'clock, A. M., why the order herein made, on the 28th June, should not be rescinded, on the ground that Bernard McKernon and Hugh W. Dunlap, who are offered as securities under said order, are not good and sufficient security for the sum of $25,000.

2d. That there is no provision in such order, for the inventory of said property for the purpose of ascertaining its present situation and value, or any safeguard to the complainants, that it should be delivered up to abide the decree of this court in the premises, in the same good situation in which it now is.

3d. That there is no provision for the crops and increase which may be made from said plantation and slaves, and said order should

order should provide that they be accounted for to the complainants, in case the decree is in their favor.

And afterwards, to wit, on the 7th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following entry on record was made in the clerk's office, to wit:

CLAYTON TIFFIN AND L. P. PERRY,
vs.
S. ANDERSON et als. } No. 948.

On motion of Upton, esq., solicitor for the complainants, it was ordered by the court, that the rule taken on defendants in this case be enlarged until Saturday next, the 9th of July, at half past 9 o'clock, A. M.

And afterwards, to wit, on the 9th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following entry on record was made in the clerk's office, to wit:

TIFFIN AND PERRY
vs. } 948.
S. ANDERSON.

The rule taken by complainants on defendants, to shew cause why the order given 28th June should not be rescinded, returnable 7th inst., and enlarged until to-day, came on to be heard, Upton, esqr., appearing for the complainants, and I. T. Preston, esqr., for the defendants; and after argument, it was ordered, that the defendants do furnish additional security, and that they be allowed until the 18th instant to obtain the same.

And afterwards, to wit, on the 18th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following letter was filed in the clerk's office, to wit:

MADISON PARISH, *July 14th*, 1842.

To ISAAC T. PRESTON, esqr.,
Attorney-at-law, New Orleans.

DEAR SIR: We have this moment received your letter in relation to the proceedings vs. us in the circuit court of the United States.

I have no doubt we will be able to give the additional security required.

The marshal*l* resides about 18 or 20 miles from us—one or both of us will start to-morrow morning in search of him, but fear we shall not be able to forward the bond by the 18th, not a moment shall be lost until the business is finished, and the necessary papers sent on. I am writing this hasty note on the bank of the river opposite Vicksburg, and now nearly time to light candles.

If we should not be able to get down by the 18th, try if possible to get a little time. Respectfully,

(Signed) ROBT. ANDERSON.

And afterward, to wit, on the 18th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following affidavit of Dunlap was filed in the clerk's office, to wit:

STATE OF LOUISIANA, *city of New Orleans:*

Hugh W. Dunlap having [been] duly sworn, saith, he is the owner of a large landed property in the State of Mississippi, the precise number of acres he cannot give; that he estimates the same to be worth above fifty thousand dollars; that he and his wife claim twenty-five hundred and sixty acres of land on the bank of the Mississippi river, and fifty negroes now on the farm in Madison parish, on which he makes six hundred bales of cotton annually; that he has due him, that he believes he will be enabled to collect, upwards of forty thousand dollars; that he does not believe that all unsatisfied the judgments and mortgages in Madison parish against him, will amount to more than thirty thousand dollars; that near ten thousand dollars of that amount is as security for others, and the principals are able to pay the debts themselves, and this affiant expects them to do so; that there is a defect in the title to 640 acres of the above mentioned tract of land on the river.

This affiant further states, that he is well acquainted with the property and liabilities of Bernard McKiernan, and that he believes that his property, and debts due him on solvent men, are worth one hundred thousand dollars after all his liabilities are paid.

(Signed) H. W. DUNLAP.

Sworn to and subscribed before me, this 14th July, 1842.

O. P. JACKSON, *Judge.*

And afterwards, to wit, on the 18th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following entry was made on record, to wit:

CLAYTON TIFFIN & LELBOURNE P. PERRY, vs. S. ANDERSON et als. } No. 948.

The rule taken on defendants in this case, to furnish additional security, came on again this day, Upton, esqr., appearing for the complainants, and I. T. Preston, esqr., for the defendants; when, on motion of I. T. Preston, esqr., it was ordered, that defendants be allowed until the 28th July, to furnish the security required.

And afterwards, to wit, on the 28th day of July, in the year of our Lord one thousand eight hundred and forty-two, the following bond was filed in the clerk's office, to wit:

STATE OF LOUISIANA, *Parish of Madison:*

Know all men by these presents that we, Nelson F. Shelton, senr., and Robert Anderson, as principals, and Bernard McKernon and William C. Demoss, securities, are held and firmly bound to A.

Sidney Robertson, marshal of the eastern district of Louisiana, and to his successors in office, in the full and just sum of twenty-five thousand dollars, good and lawful money of the United States, to be made and levied of our respective goods and chattels, land and tenements, and to the said A. Sidney Robertson, marshal D. C., rendered, and for the payment of which, well and truly to be made to the said A. Sidney Robertson, D. C., to his successors in office, we hereby bind ourselves, our heirs and assigns, firmly by these presents. Signed this 25th day of July, A. D. 1842.

Now the condition of the above obligation is such, that whereas the following hereinafter described property was, by a previous order of the honorable circuit court of the United States for the eastern district of Louisiana, placed in the hands of John W. Butler, receiver in chancery, at the suit of Clayton Tiffin and Lelbourne P. Perry *vs.* Nelson F. Shelton, Robert Anderson, and et als., No. , on the docket of said court; and the said property having been restored to the possession of said Shelton and Anderson, defendants in the above entitled suit; now if the said Shelton and Anderson, defendants as aforesaid, shall well and truly produce, deliver, and have forthcoming, all of the following described property, viz: A certain tract or parcel of land situate, lying, and being in the parish of Madison, known as the Collins' tract, section nine, township fifteen east, bounded as follows: above by the lands now in the occupation of George W. Grove, below by the lands of William C. Demoss, and south by the lands of Bernard McKiernan, containing six hundred and forty-four acres, more or less, together with all and singular the appertenances thereunto belonging, or in any way appertaining. Also the following described negroes, viz: Sandy, Letha, Jutut, Malinda, Hat, Granville, Elizah, Eliza, Harry, John, Milly, Squire, Celia, Peter, Henry, Anderson, July Ann, Elizabeth, William, Edward, Patsy, Sally, Ned, Jordan, Jessee, Louisa, Bob, Matilda, Sarah, Squire, Caty, Abby, Bob, Betty, Tom, Overton, Jose Miller, Rachell, Joe, Jesse, Johnson, Rhoda, George, Ara, Harrison, Paris, Dick, Charles, Fountain, Jackson. Also twenty-one head of mules and horses, and forty head of cattle—forty head of hogs; also the household and kitchen furniture, and the implements of husbandry, when thereto required by said A. Sidney Robertson, marshal, or his successors in office, or by the order of the court aforesaid, then the above obligation to be void, otherwise to be and remain in full force and effect, against all the parties.

(Signed) NELSON F. SHELTON, [SEAL.]
ROBT. ANDERSON, [SEAL.]
WM. C. DEMOSS, [SEAL.]
THOS. B. SCOTT, [SEAL.]

Signed this the day and year above written, in the presence of—

Witness, as to Nelson F. Shelton and Robert Anderson, G. W. Brice.

John Shelton, witness as to signature of William C. Demoss.

And afterwards, to wit, on the 27th day of December, in the year of our Lord one thousand eight hundred and forty-two, the following subpœna in chancery was issued from the clerk's office, to wit:

UNITED STATES OF AMERICA,

The President of the United States to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon B. Peyton and T. N. Pierce, agents and attorneys for Hilary Mosely and William W. Bouldin, in the suit of Mosely & Bouldin *vs.* John M. Perry and L. P. Perry, No. 390 of the docket of the U. S. circuit court, eastern district of La., to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on 1st Monday in January, 1843, then and there to answer a bill in chancery filed against them, wherein Clayton Tiffin and Lilbourne P. Perry are complainants, and said B. Peyton and T. N. Pierce, agents and attorneys as aforesaid, are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this the 27th day of December, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-seventh year of American independence.

(Signed) D. N. HENNEN, *Clk.*
By H. B. PAGE, *Dep'y Clk.*

Marshall's return.

Received, December 27th, 1842, and on the 28th served copy of the within subpœna in chancery on B. Peyton, esqr., by reading the same to him, at New Orleans, when he stated to me that he was no longer the attorney in the case, and declined acting in the matter. Returned 29th Dec., 1842.

(Signed) A. SIDNEY ROBERTSON,
U. S. marshal.
By GEORGE W. GAVNEY,
Dep. U. S. marshal.

And afterwards, to wit, on the 9th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN & PERRY,
vs.
S. ANDERSON ET ALS. } No. 948.

The trial on the plea and demurrer of defendants came on before the court this day; F. H. Upton, esqr., appearing for the complainants, and I. T. Preston, esqr., for the defendants; where-

upon, after some considerable progress, the further consideration of the case was by consent continued until Friday, the 13th January, at 10 o'clock, A. M.

And on motion of I. T. Preston, esqr., complainants' counsel not objecting, it was ordered that the testimony of witnesses, on behalf of the complainants and respondents, on the plea to the jurisdiction of the court, be taken before the master in chancery, on to-morrow, the 10th inst., at 4 o'clock, P. M.

And afterwards, to wit, on the 9th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following testimony of B. McKernon, was filed in the clerk's office :

Testimony of Mr. McKernon, taken in open court, Jan'y 9th, 1843.

Deponent is acquainted with Mr. W. F. Shelton and Robert Anderson. Has known them since the fall of 1840, or spring of 1841. He knew them first on the plantation in controversy, in parish of Madison. They came to this county for the purpose, as deponent has heard them allege, of settling claims.

Mr. Anderson never has had his family from Virginia, his family still reside in Virginia.

At last July election, on deponent asking Mr. Anderson to vote, he objected to vote, and did not vote.

That they came here for the purpose of moving up claims against Samuel Anderson, and converting them (claims) into money, and that he has heard R. Anderson expressly say that he had no intention of making Louisiana his residence, that he has never heard Mr. Shelton say any thing upon the subject.

He thinks Mr. Anderson came here first. He repeatedly heard Mr. Anderson say, before the institution of this suit, that his home and family were in Virginia, that his wife and family have never been here.

That Shelton and his wife are absent from this county, in Virginia, but that they left after this suit was instituted. His wife came with him when he first came to this county ; that he had no children ; deponent's plantation joins the one in controversy.

Deponent never knew either Shelton or Anderson to serve as jurors, or vote at elections.

Deponent states that Mr. Anderson has several of his sons with him here in this county, who have lived with him on the plantation, and he knows nothing with regard to the rest of his family.

Mr. Shelton may have voted or served upon a jury without his knowing it, but does not think Mr. Anderson ever has—in the year *proceeding*.

Deponent states that, in the year *proceeding* the last July election, he contended, in conversation with Mr. Anderson, that he (Mr. A.) had no right to vote. Mr. Anderson replied that he had, that he had been here long enough to entitle him to a vote, but that he did not choose to exercise that right, as he never intended

to make this State his place of residence; and that the same conversation, in substance, took place at the last July election.

And afterwards, to wit, on the same day and year, the following depositions of R. C. Stockton were filed in the clerk's office, to wit:

I have heard Mr. Shelton say that he considered himself a resident of the State of Louisiana; this was in the winter of 1840 and 1841, as deponent believes.

Both Robert Anderson and Shelton deponent has considered as residents of Louisiana for nearly or quite two years past; he founds this belief on the fact of their actual residence in parish of Madison, Louisiana, during that time. They have both resided on the plantation in controversy in this suit ever since deponent first knew them, except for a short time, during which the said plantation was in the hands of a receiver of this court, and they then remained in the neighbourhood in the said parish of Madison; after the property was received back by them on giving bond, they again retired to the plantation, and have resided there ever since. Shelton has had his family with him most of the time, but Robert Anderson has never had his family with him in Louisiana, and deponent did not know where his family was, nor does he know where it now is; believes, however, his family is not in Louisiana.

Deponent does not know that he has ever heard Robert Anderson say he considered Louisiana his residence, but affiant has long thought and considered him a resident citizen of Louisiana.

Deponent did not know what family Robert Anderson had; knows he has one son, Samuel Anderson, who is over age, and who resided in Louisiana before his father came to Louisiana; he has also one other son, a physician, who did reside for a time in Louisiana, but has removed to some other State.

Deponent has never known Robert Anderson or Shelton to vote at elections; but deponent believes there has been but one general election since they came to the State of Louisiana, which was in July last, since the institution of this suit.

Deponent does not recollect if said Anderson did or did not serve on the jury. Witness is counsel in this suit; is a practising lawyer in the said parish of Madison; and is well acquainted with all the parties defendants in this suit.

Signed, R. C. STOCKTON.

Endorsed.

Since writing the within evidence, from conversations which I have had with Mr. Dudly, who introduced me to N. F. Shelton in the year 1840 or 1841, in New Orleans, and from conversations with others, I believe I was laboring under a mistake in stating that said Shelton had told me the parish of Madison was his residence.

(Signed) R. C. STOCKTON.

Sworn to and subscribed before me, this 21 January, 1843.
(Signed) D. N. HENNEN, *Clk.*
By H. B. PAGE, *Dep'ty clk.*

And afterwards, to wit, on the same day and year as above, the following bill of exceptions was filed in the clerk's office, to wit:

TIFFIN & PERRY, vs. ANDERSON, NELSON, & others. } In equity.

On the trial of this cause the defendants offered to prove, by B. McKennon, one of their witnesses, that Robert Anderson, one of the defendants, refused to vote at the last general election in Louisiana, in July, when solicited to that effect; stating, as his motive, that he was not a citizen of the State of Louisiana or entitled to vote.

The evidence was opposed, on the ground that it consisted of the declaration of the party after the institution of this suit, and rejected by the court; to which opinion of the court defendants excepted.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. judge.

And afterwards, to wit, on the 11th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following testimony of C. P. Young was filed in the clerk's office, to wit:

Depositions of Charles P. Young, taken January 11th, 1842.

Deponent states that he is well acquainted with both the defendants. Has known Mr. Shelton since the fall of 1840. Mr. Shelton was at that time, as deponent understood from himself, a resident of Virginia. Mr. Shelton was a man of family; his wife was with him in this county. His business, as deponent learned from himself and others, was to collect a debt due him by Samuel Anderson. Mr. Shelton left here for Virginia during the summer of 1842. During the interval between the fall of 1840 and 1842, he resided principally on the plantation in parish of Madison, and part of the time at the Mississippi springs. In the early part of 1841 deponent often heard both Mr. S. and his wife, his wife especially, talk of going to Virginia, but that they were detained here for want of funds.

Deponent does not know that Mr. Shelton ever spoke of Louisiana as his residence.

Deponent states that Mr. Shelton claimed his residence to be Virginia; does not know that he ever claimed his rights as a citizen of Louisiana. Mr. Shelton left an adopted child in Virginia, as witness learned from Mr. Shelton himself, and more particularly from Mrs. Shelton. They made purchases here for their adopted child, to take with them to Virginia.

Deponent has never had any business transactions with Mr. Shelton, except that Shelton settled some business with him commenced

by Anderson. Thinks Mr. Shelton from 47 to 50 years of age; believes he is a native of Virginia, and that his occupation has been that of a planter; that he has understood from Mr. Shelton that he (Shelton) has land and slaves in Virginia.

The solicitor for the complainants objects to the above testimony, so far as it consists of the declarations of the defendants.

Cross examination.

Deponent resides in New Orleans during the business season, but claims his residence and votes in the parish of Madison. The conversations he had with Mr. Shelton, from which he derived his impression that he was a resident of Virginia, was previous to this time last year. Since the early part of 1841, when they came into possession of the plantation in controversy, they have lived upon it, and carried it on until it was put into the hands of a receiver in this suit, and afterwards when it was received back by them upon bond.

Witness learned from the defendants, Anderson & Shelton, that they were indebted in Virginia, and would not return there until they had raised the money from the crop, or by negotiation. Deponent states that Mr. Shelton's visit to the Mississippi springs was merely one of health.

The accommodations upon the plantation in controversy were very poor, and not adapted to the residence of a family; but since they have been there, in consequence of the caving in of the river bank, they have built a double log house—which deponent does not think such a residence as Mrs. Shelton has been accustomed to, *was* such a one as they would have if they considered it their permanent home.

The above deposition taken before me,

DUNCAN N. HENNEN, *Master in chancery.*

And afterwards, to wit, on the 13th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made in the clerk's office, to wit:

This case being continued until to-day, was resumed before the court, whereupon F. H. Upton, esq., appeared for the complainants, and continued his argument upon the demurrer, and the plea to the jurisdiction of the court; when, after some considerable progress, the case was continued until to-morrow at 10 o'clock, A. M., for further argument, only as to the plea to the jurisdiction of the court on the citizenship of Anderson and Shelton.

And afterwards, to wit, on the 14th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made in the clerk's office, to wit:

TIFFIN & PERRY
vs.
SAM'L ANDERSON et als. } No. 948.

In this case, the consideration of the plea to the jurisdiction of

of the court was this day resumed—F. H. Upton appearing for the complainants, and I. T. Preston, esq., for the respondents; whereupon, after argument, the case was submitted, and the court took time to consider.

And afterwards, to wit, on the 21st day of January, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made in the clerk's office, to wit:

TIFFIN & PERRY,
vs.
S. ANDERSON et als. } No. 948.

The court having maturely considered *considered* the testimony, argument of counsel, and authorities in support of, and in opposition of, the pleas and demurrers filed by the defendants to the jurisdiction of the court herein, it is ordered and decreed, that pleas and demurrers be overruled and dismissed, for the reasons to be filed by the court, and that the answers which the respondents have filed with the clerk, be considered as filed from the date of this decree.

And afterwards, to wit, on the 23rd day of January, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made in the clerk's office, to wit:

TIFFIN & PERRY,
vs.
SAMUEL ANDERSON et als. } No. 948.

On motion of F. H. Upton, esq., solicitor for complainants in this case, and considering the proceedings of the twenty-ninth and the forty-fifth rules for the court of equity of the United States, it was ordered that the complainants have leave to file herein an amendment to their original bill without costs.

And afterwards, to wit, on the 23rd January, in the year of our Lord one thousand eight hundred and forty-three, the following amended bill was filed in the clerk's office, to wit:

UNITED STATES CIRCUIT COURT,
Ninth circuit eastern district, Louisiana:

CLAYTON TIFFIN & LILBOURNE P. PERRY, compl'ts,
vs.
SAMUEL ANDERSON, ROBERT ANDERSON, NELSON F. SHELTON, HILERY MOSELY, and WILLIAM W. BOULDIN, defendants. } In equity.

And now the complainants in this bill, having first obtained leave of the honorable court, under the twenty-ninth rule of the rules for the courts of equity of the United States, to file an amendment to their bill in equity by them herein filed, do add thereto, by way of amendment, as follows:

The respondents, Samuel Anderson, Nelson F. Shelton, and Robert Anderson, in the answers by them made to the bill of your orators, have declared that the three notes described in your orators' bill, as given by Samuel Anderson to your orator Lilbourne P.

Perry, and secured by mortgage upon the plantation and slaves sold by your orators to the said Samuel Anderson; and which notes, as your orators stated in their original bill, were on file in the district court for the 9th judicial district of Louisiana, in the parish of Madison, have been ordered by the judgment of said district court in the parish of Madison, and by Judge Curry, presiding in the same, to be given to the said Samuel Anderson. The said judge decreeing that the same were the property of the said Samuel Anderson, and had been extinguished by confusion.

Now your orators do aver, that this attempt of the respondents to interpose on their behalf this pretended judgment of said district court, is *is* a gross and impotent *edeavor* to forestall the decree of this honorable tribunal; for said pretended judgment, thus arrayed by the respondents in their answers aforesaid, was obtained from said Judge Curry after the institution of these proceedings, and after service of subpœnas in the original bill of your orators had been made upon said respondent.

Your orators do further aver and state, that said pretended judgment can have no force or effect whatsoever, for the further reason that it was given in a suit which had long been discontinued in said district court; no parties were properly before said court for the trial of said question, and the whole proceedings were without form or regularity, and are absolutely void.

Your orators made these averments by way of addition and amendment to their original bill, induced by that portion of the answer of respondents referring to said pretended judgment, not from any apprehension that said pretended judgment can, in any degree, effect the interest of your orator in this suit, but in order to shew to this honorable court the pitiful and impotent means to which said respondents have resorted, after the proceedings were commenced against them, and they had received notice thereof, to bolster up their unconscionable and iniquitous claim to the property of your orators.

In conclusion, your orators pray that said pretended judgment of said district court, referred to and relied upon in the said answers of the respondents, be decreed to be of no effect whatever as against the claim of your orators, as set forth in the original bill.

And, as in duty bound, your orators will ever pray.

By their solicitor FRANCIS H. UPTON.

And afterwards, to wit, on the 24th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following general replication was filed in the clerk's office, to wit:

TIFFIN & PERRY, vs. SAMUEL ANDERSON et als. } In equity, No. 948, U. S. circuit court.

And now the complainants herein, under the forty-fifth rule of the rules for the court of equity of the United States, to the several answers of the respondents, Samuel Anderson, Robert Anderson,

and Nelson F. Shelton, made to the bill of complainants, do file this, the general replication, reiterating all the facts and averments by them set forth in their original bill, and the amendment thereto, and denying every thing contained in each and all of the aforesaid answers inconsistent therewith.

By their solicitor,

(Signed) FRANCIS H. UPTON.

And afterwards, to wit, on the 24th day of January, in the year of our Lord one thousand eight hundred and forty-three, the following rule by complainants, to re-appoint a receiver, was filed in the clerk's office, to wit:

TIFFIN & PERRY, vs. SAMUEL ANDERSON et als. } In chancery, No. 948.

On motion of Francis H. Upton, esq'r, solicitor for the complainants in this suit, it is ordered that the respondents shew cause on Saturday, the 28th inst. of January, at 10 o'clock, A. M., why the order made herein upon filing the bill of complaint, directing that the plantation and slaves described in said bill should be placed in the hands of a receiver to abide the result of the suit, should not be restored, and the property be replaced in the hands of said receiver, on the following grounds:

1st. That the security given by said respondents under the order, upon which said property was restored to them, was not approved by the court previous to their restoration to its possession, and has never been approved by the court.

2nd. That said security is utterly insufficient.

3rd. That there is no provision made in the bond filed by respondents as security for the rents and profits of said plantation and slaves, and the proceeds of the crops during the pending of suit.

And afterwards, to wit, on the 8th day of February, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made, to wit:

In this case on motion of the counsel for the complainants it is ordered by the court, that Balie Peyton, esq'r, be appointed to correspond with Mosely & Bouldin, and notify them of the pendency of this suit, and that he be served with a copy of this order, and of the original and amended bill.

And afterwards, to wit, on the 11 February, in the year of our Lord one thousand eight hundred and forty-three, the following entry on record was made, to wit:

The motion of the complainants in this case, on the defendants, to shew cause why the order of court, heretofore given, appointing a receiver, but afterwards rescinded, should not be reinstated, and returnable this day, was on motion of Upton, esq'r, solicitor for the complainants, continued until Monday, the 13 inst., at 10 o'clock, A. M.

And afterwards, to wit, on the 13th day of February, in the year

of our Lord one thousand eight hundred and forty-three, the following entry on record was made, to wit:

The rule taken herein on the 24th day of January, came up to-day, when upon hearing argument of counsel, it is ordered that the respondents have until to-morrow morning the 14th instant, at 10 o'clock, to furnish additional security, conditioned for the forthcoming of all the property described in the bill filed herein to abide the result of this suit; and also for the faithful accounting for, and paying over to, the parties complainants, should they prevail herein, all the proceeds of said property, of the crops of said plantation, and the income of the labor of said slaves, during the pendency of this suit.

And afterwards, to wit, on the 15th day of February, in the year of our Lord, one thousand eight hundred and forty-three, the following entry on record was made, to wit:

TIFFIN & PERRY
vs.
SAMUEL ANDERSON et al. } No. 948.

The counsel having maturely considered the grounds taken in the rule herein, on the first Monday of this month, and the arguments of counsel thereon, I. T. Preston, esq'r, appearing as counsel for the respondent, and F. H. Upton, esq'r, for complainants, the court orders that the respondents do furnish an additional bond, with good and sufficient security, conditioned to account for, and pay over to, complainants herein, should they prevail in this suit, all the income of the property in dispute, and the proceeds of the crops of the plantation, which have accrued or which may accrue during the pendency of this suit, and that the security already given be considered sufficient for the safe return of the property described in the petition; and that the respondents be allowed fifteen days from this time to procure and file the additional bond and security.

And afterwards, to wit, on the 20th day of February, in the year of our Lord one thousand eight hundred and forty-three, the following bond was filed in the clerk's office, to wit:

Know all men by these presents that we, Robert Anderson and Nelson F. Shelton, principals, and H. Dunlap and John B. Bemiss, are held and firmly bound, jointly and severally, unto Clayton Tiffin and Lilbourne P. Perry, in such sum of lawful money of the United States of America, as may hereafter be decreed in favor of the said Tiffin and Perry according to the conditions of this bond, to be paid to the said Clayton Tiffin and Lilbourne Perry, their heirs, executors, administrators and assigns; for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 18th day of February, in the year of our Lord eighteen hundred and forty-three.

Whereas, the above bounden Nelson F. Shelton and Robert An-

derson have, in suit in chancery, pending in said court, wherein said Tiffin and Perry are complainants, and they are defendants, on their application to the honorable the circuit court of the United States for the ninth circuit, holding sessions in and for the eastern district of Louisana , been put into possession of a tract of land and fifty slaves, in the parish of Madison, claimed by the plaintiff, on giving bond and security to abide the judgment of the court; and whereas, a further order has been made that they give bond and security, to accounts for the profits of said plantation.

Now the condition of the above obligation is, that we, the above bounden Robert Anderson and Nelson F. Shelton, will well and truly account for, and pay over, according to the judgment and decree of the court, all profits arising from the use of the plantation and slaves aforesaid, then and in that case the above obligation shall be void, or else remain in full force and virtue.

In presence whereof, we hereto subscribe our names and affix our seals, at the city of New Orleans, the day and year first above written, in presence of

ROBERT ANDERSON,
By his attorney in fact S. ANDERSON,
NELSON F. SHELTON,
By his attorney in fact S. ANDERSON.
H. W. DUNLAP, [SEAL.]
JOHN B. BEMISS, [SEAL.]

Witness:
HENRY NICHOLSON.

And afterwards, to wit, on the 29th day of April, in the year of our Lord one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN & PERRY
vs. } No. 948.
S. ANDERSON & als.

On motion of Francis H. Upton, esq'r, solicitor for the complainants herein, it is ordered by the court that commissions for the taking of testimony, to be used upon the trial hereof, do issue, directed to C. B. McKiernan, of the parish of Madison, and Alex. H. Arthur, of the State of Mississippi; and that D. N. Hennen, esq'r, be appointed to take the testimony of witnesses in New Orleans. And upon cause shown to the court, it is further ordered, that thirty days from the rendition of this order be allowed for the completion of testimony herein.

And afterwards, to wit, on the same day and year, the following entry was made on record, to wit:

On motion of Francis H. Upton, solicitor for complainants herein, and on shewing to the court the application of the sureties on the respondents' bond, (for the safe keeping and delivering of the property in dispute, to abide the result of the controversy,) for a dis-

charge from their further liability upon said bonds, upon the ground that they consider the safety of said property in jeopardy, while in its present position; and on shewing to the court the agreement of the respondents, Samuel Anderson and Robert Anderson, that the plantation and slaves in controversy shall be restored to the possession of a receiver, to be appointed by the court, and the court considering the same, it is ordered that the marshall of the United States do forthwith take into his possession the plantation and slaves described in this bill, or the documents thereto annexed, together with the stock, implements and appurtenances connected with and belonging to the same, and deliver them into the hands and possession of a receiver, upon the said receiver's giving to the marshall a good and sufficient bond, in the sum of twenty thousand dollars, conditioned for the safe keeping and administration of said property, the faithful and true account of the proceeds of the same, during the pendency of this suit, and the final delivery of the same, in compliance with such final order as the court may render herein. It is further ordered that the said receiver be John M. Perry.

And afterwards, to wit, on the 29th day of April, in the year of our Lord one thousand eight hundred and forty-two, the following agreement was filed in the clerk's office, to wit:

CLAYTON TIFFIN & LELBOURNE P. PERRY, vs. SAMUEL ANDERSON, et als. } Circuit Court, U. S. In equity, No. 948.

We hereby agree, that the property described in the bill filed in this suit, or the instrument of mortgage filed therewith, and referred to therein, being the plantation and slaves in controversy, shall be placed in the hands of a receiver to be appointed by the court, and are willing that that receiver should be John M. Perry; and we do hereby withdraw our opposition to the motion made to that effect heretofore, by the solicitor for the complainants herein.

(Signed) S. ANDERSON,
ROB'T ANDERSON.

Test: H. W. DUNLAP.

And afterwards, to wit, on the 29th day of April, in the year of our Lord one thousand eight hundred and forty-three, the following petition was filed in the clerk's office, to wit:

Your petitioner, Hugh W. Dunlap, a citizen of the parish of Madison, Louisiana, showeth, that he has signed two bonds, one for the safe keeping of the slaves and stock, and the other for the safe keeping of the crops and the farm, now in possession of Nelson F. Shelton and Robert Anderson; your petitioner is unwilling to stand the security of said Shelton and Anderson, he is fearfull that some of said negroes may be run off and the crops wasted. He therefore prays that your honor will order that said property be

delivered to a receiver or the marshal, and that your petitioner be discharged from further liability on said bonds: the prayer being granted, your petitioner will ever pray, &c., &c.

(Signed) H. W. DUNLAP.

And afterwards, to wit, on the same day and year, the following writ of possession was issued from the clerk's office, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to deliver to John M. Perry, or some other suitable and proper person as receiver in chancery, the following described property, to wit:

1st. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district of the Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager by purchase from the said Lelbourne P. Perry and Clayton Tiffin, together with all the stock upon said plantation, and all and singular the furniture, utensils, and appurtenances, thereunto connected and belonging.

2nd. The following mentioned negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, Julyann his wife, twenty six, Betsy, William, and Everett, their children, all aged under ten years; Sandy, thirty, Letha his wife, twenty-eight, and their children, Malinda twelve, Julia, Hutchinson and Aury, under ten years; George, thirty-four, Rhoda his wife, thirty-four, and Amy their daughter, thirteen; Harry, forty, Eliza his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Nell, forty; Jordan, thirty-six; Howden, thirty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years. Upon the said John M. Perry, or other persons, entering into bond with sureties in the sum of twenty thousand dollars, conditioned for the safe keeping and administration of said property, the faithful and true account of the proceeds of the same, during the pendency of this suit, and the final delivery of the same, in compliance with such final order as the court may render herein. And hereof *may* due return according to law.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-ninth day
[SEAL] of April, A. D. 1843, and sixty-seventh year of the independence of the United States of America.

(Signed) DUNCAN N. HENNEN, *Cl'k.*
By H. B. PAGE, *D'y Clk.*

Marshal's return.

Received, April 29th, 1843; executed on the 11th May, 1843, as modified by rule of court of 3d May, 1843. The return in the above case will be found endorsed on said rule of court.

A. SIDNEY ROBERTSON,
U. S. Marshall.
By J. L. HYNES,
Dep'ty U. S. M.

And afterwards, to wit, on the 1st day of May, in the year one thousand eight hundred and forty-three, the following order on complainants was filed in the clerk's office, to wit:

TIFFIN and PERRY
vs.
SHELTON and ANDERSON.

On motion of Isaac T. Preston, solicitor for the defendant, Nelson F. Shelton, it is ordered that the complainants shew cause on Wednesday, the 3d inst., why the orders entered in this case on Saturday, the 29th April, 1843, should not be rescinded as being illegally obtained, and why the said defendants should not be maintained in possession of his plantation and slaves, on giving good and sufficient security to abide any decree that may be rendered in this case.

And afterwards, to wit, on the 3d day of May, in the year of our Lord, one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als.

The rule taken by the respondent, Shelton, upon the complainants, returnable this day, to shew cause why the order entered in this case on Saturday, the 29th April, should not be rescinded, came on this day to be heard, whereupon, after argument of counsel, it is considered by the court that said order be so modified that John M. Perry be put into possession of the one undivided sixth of the plantation and slaves, &c., on giving security in the sum of $\$3{,}333\frac{1}{3}$, and that Nelson F. Shelton remain in possession of the five-sixths of said property, on giving security with John L. Harris, in the sum of $\$16{,}667\ \frac{00}{100}$, conditioned as the bonds heretofore taken.

And afterwards, to wit, on the 4th day of May, in the year of our Lord one thousand eight hundred and forty-three, the following bill was issued from the clerk's office, to wit:

TIFFIN and PERRY
vs.
SHELTON and ANDERSON. } No. 948.

On motion of Isaac T. Preston, solicitor for the defendant, Nelson F. Shelton, it is ordered that the complainants shew cause on Wednesday, the 3d instant, why the orders entered in this case on Saturday, the 29th of April, 1843, should not be rescinded as being illegally obtained, and why the said defendant should not be maintained in possession of his plantation and slaves, on giving good and sufficient security to abide any decree that may be rendered in this case—1st May, 1843.

TIFFIN & PERRY
vs.
S. ANDERSON et als. } 948.

The rule taken by the respondent Shelton, upon the complainants, returnable this day, to shew cause why the order entered in this case, on Saturday, the 29th April, should not be rescinded, came on this day to be heard; whereupon, after argument of counsel, it is considered by the court, that said order be so modified that John M. Perry be put into possession of the one undivided sixth of the plantation and slaves, &c., on giving security in the sum of $3,333\frac{1}{3}$, and that Nelson F. Shelton remain in possession of the $\frac{5}{6}$ of said property, on giving security with John L. Harris in the sum of $16,667, conditioned as the bonds heretofore taken.

3*rd May*, 1843.

Clerk's office, circuit court of the United States, fifth circuit, in and for the eastern district, Louisiana.

I certify the foregoing to be true copies of the original orders of court obtained in the case of Tiffin and Perry vs. Shelton and Anderson in this office.

Witness my hand and the seal of the court at New Orleans, this 4th day of May, A. D. 1843.

(Signed,) DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Received, May 4th, 1843, and on the 11th day of May, 1843, executed the within rule of court by placing Nelson F. Shelton in possession as receiver in chancery of five-sixths of the property set forth in writ of possession number 948, upon his giving bond for the sum of $16,667, with John L. Harris as security; and by placing Branch R. Robertson in possession of the undivided sixth part of said property, upon his giving bond in the sum of $3,333\frac{1}{3}$,

with A. J. Lowry and Thomas P. Roe as securities; said bonds are herewith returned—four hundred and twenty miles from New Orleans, Louisiana.

420 miles.

(Sig.) A. SIDNEY ROBERTSON,
United States marshal.
By J. L. HYNES,
Deputy U. S. marshal.

PARISH OF MADISON, LA., *May 13th*, 1843.

And afterwards, to wit, on the 24th day of October, in the year one thousand eight hundred and forty-three, the following bond was filed in the clerk's office, to wit:

STATE OF LOUISIANA, *parish of Madison.*

Know all men by these presents, that I, Nelson F. Shelton and John L. Harris are held and firmly bound, jointly and severally, unto Clayton Tiffin and Lelbourne P. Perry, in the sum of sixteen thousand six hundred and sixty-seven dollars of lawful money of the United States of America, according to the conditions of this bond, to be paid to the said Clayton Tiffin and Lilbourne P. Perry, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the tenth day of May, one thousand eight hundred and forty-three.

Whereas the above bound Nelson F. Shelton, in suit in chancery pending in said court, wherein said Tiffin and Perry are complainants, and he is defendant, on application to the honorable the circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana, been put into possession of a tract of land and fifty slaves in the parish of Madison, claimed by the plaintiffs, on giving bond and security to abide the judgment of the court; and whereas it has been further ordered, that he give bond and security to account for all the profits of said plantation.

Now the conditions of the above obligation is, that I, the above bound Nelson F. Shelton, will well and truly account for and pay over, according to the judgment and decree of the court, all profits arising from the use of the plantation and slaves aforesaid; then and in that case the obligation shall be void, or else remain in full force and virtue.

In *presence* whereof, we hereunto subscribe our names, and affix our seals, at the place and time above mentioned, in presence of—

(Signed,) NELSON F. SHELTON, [L. S.]
JOHN L. HARRIS. [L. S.]

Witnesses—
P. G. OLVER,
B. R. ROBERSTON.

And afterward, to wit, on the same day and year, the following bond was filed in the clerk's office, to wit:

Know all men by these presents, that we, Alfred J. Lowry, Thomas P. Roe, and Branch R. Robertson are held and firmly bound unto Clayton Tiffin and Lilbourne P. Perry in the full sum of three thousand three hundred and thirty-three dollars thirty three and a third cents, lawful money of the United States, for the payment whereof we hereby bind ourselves, our heirs, and assigns forever.

The condition of the above obligation is such, that if the said Branch R. Robertson shall safely keep and deliver to the order of the circuit court of the United State[s], for the eastern district of Louisiana, the property put in his hands as receiver in chancery, being the one-sixth part of all the property set forth in a certain writ of possession issued out of said court, and the same safely keep and administer, and the fruits thereof account for to said court, then the foregoing obligation is to be null and void; otherwise to remain in full force and effect.

Witness our signatures hereunto affixed in the parish of Madison, State of Louisiana, this 10th day of May, 1843.

(Signed,) A. J. LOWRY,
THOMAS P. ROE,
B. R. ROBERTSON.

Witness—
J. L. HYNES,
J. W. PULLER.

And afterwards, to wit, on the 11th day of February, in the year of our Lord one thousand eight hundred and forty-three, the following notification was filed, to wit:

TIFFIN and PERRY
vs.
SAMUEL ANDERSON et als. } Circuit court of U. S.—In equity.

And now the complainants herein require from the respondents the production of the written receipt signed by John M. Perry, as the agent of Tiffin and Perry, for the note of $18,282, signed by Austin Bohamin and Ragan, and endorsed by Saml. Henderson, and transferred to the complainants as a portion of the cash consideration for the purchase of the plantation and slaves in controversy, and the respondents are hereby notified to produce said receipt upon the trial hereof.

(Signed,) FRANCIS H. UPTON,
Solicitor for complainants.

And afterwards, to wit, on the 5th day of June, in the year of our Lord one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
SAMUEL ANDERSON et als. } No. 948.

This cause came on for a hearing upon the merits this day; F. H. Upton, esq., appearing for the complainants, and I. T. Preston, esq., for the defendants; whereupon, after considerable progress in the cause, it was continued for further consideration until to-morrow at ½ 9 o'clock, A. M.

And afterwards, to wit, on the 7th day of May, in the year one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } No. 948.

The trial of this cause was resumed this day from the 5th inst., whereupon the defendant, N. F. Shelton, offered in evidence the petitions, notes, judgments, and executions in the suits of Clayton Tiffin vs. Samuel Anderson, No. 577 of the docket of this court, and also No. 795 and 606, between the same parties, when the complainant's solicitor objecting to these, unless the whole record was introduced, the court decided that the whole record should be received; whereupon, after some considerable progress, the further consideration of the cause was postponed until to-morrow.

And afterwards, to wit, on the 8th day of June, in the year of our Lord one thousand eight hundred and forty-three, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } No. 948.

The hearing of this cause was this day resumed; F. H. Upton, esq., appearing for the complainants, and I. T. Preston, esq., and J. B. Beamis, esq., for the defendants; whereupon, after considerable argument, the case was continued until to-morrow.

And afterwards, to wit, on the 9th day of June, 1843, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } No. 948.

This cause, which was continued from yesterday, was argued at considerable length to-day, whereupon, the hour of 3 having arrived, it was again continued until to-morrow at 9 o'clock, A. M.

And afterwards, to wit, on the 10th day of June, 1843, A. D., the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } No. 948.

This case, which was continued over from yesterday, was, in con-

sequence of the indisposition of the judge, again continued until Monday, the 12th inst., at 9 o'clock, A. M.

And afterwards, to wit, on the 19th day of June, A. D. 1843, the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } 948.

The hearing of this cause was this day resumed by the court; whereupon the solicitor for the complainants entered upon his closing argument, and after considerable progress, the case was continued for further argument until to-morrow.

And afterwards, to wit, on the 20th day of June, 1843, A. D., the following entry was made on record, to wit:

TIFFIN and PERRY
vs.
S. ANDERSON et als. } No. 948.

The hearing of this cause was resumed this day by the court; whereupon the final argument of the complainants' solicitor being closed, the case was submitted.

And afterwards, to wit, on the 27th day of June, in the year one thousand eight hundred and forty-three, the following opinion was filed.

TIFFIN and PERRY
vs.
SAML. ANDERSON et als. } Circuit court, United States.—In equity, June, 1843.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, that the complainants are justly, legally, and equitably entitled to payment of the sum prayed for in their bill of complaint, as the unpaid consideration money for the purchase of the plantation and slaves described in said bill, and purchased from the complainants by the respondent, Samuel Anderson; that said sum has not been paid, satisfied, or extinguished, notwithstanding the allegations and matters of defence set forth in the answer of the respondents; that the entire property mortgaged by the respondent, Samuel Anderson, to the complainant, Lilbourne P. Perry, is in law and equity subject to the payment of said sums; that the lien and mortgage exist upon said property, in the possession of the respondent, Robert Anderson, and Nelson F. Shelton, the third possessors thereof, notwithstanding the matters of defence which they have severally set forth in their answer to the bill of complaint. And, therefore, in order to carry into effect this decree, and secure to the complainants their legal and equitable rights, it is ordered, that the marshall of this court do forthwith take into his possession the property described in the mortgage from Samuel An-

derson to Lilbourne P. Perry, and restore the same to the possession of the complainants, or their legal representative; and if, within sixty days thereafter, the said respondent shall well and truly pay, or cause to be paid, the complainants, or their legal representative, the sum of forty thousand dollars, with interest thereon from the first day of January, 1842, until paid, the same being the unpaid consideration for the purchase of said property from the said complainants, then said property shall be relinquished to respondents.

And it is further ordered, that the complainants, upon being restored to the possession of said property, do give bond, in the sum of twenty thousand dollars, conditioned for the restoration of said property, and the proceeds thereof, from the time of their being placed in possession by the marshal, to the respondents, in case said respondents shall see cause to appeal from this decree to the Supreme Court of the United States, and the decree of this court be reversed upon said appeal.

It is further ordered, that the respondents pay the costs of this suit.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

And afterwards, to wit, on the 7th day of June, in the year of our Lord one thousand eight hundred and forty-three, the following bill of exceptions was filed in the clerk's office, to wit:

CLAYTON TIFFIN & L. P. PERRY
vs.
SAMUEL ANDERSON, & N. F. SHELTON et als. } No. 948.

On the trial of this cause, the defendant Nelson F. Shelton offered Garland as a witness to prove that he is, and always has been, a citizen of the State of Virginia, and is not a citizen of the State of Louisiana; the testimony was opposed by the counsel of the complainants, and rejected by the court, on the ground that the question of his citizenship had already been decided in this case, to which opinion of the court, the said defendant Shelton excepted.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

And afterwards, to wit, on the 27th day of June, in the year of our Lord one thousand eight hundred and forty-three, the following writ of possession was issued from the clerk's office, to wit:

The President of the United States to the marshal of the United States for the eastern district of Louisiana, or his lawful deputy, greeting:

TIFFIN & PERRY
vs.
S. ANDERSON et als. } No. 948.

You are hereby commanded, that you forthwith take into your possession, and restore to the above named complainants, Clayton

Tiffin and Lilbourne P. Perry, or their legal representative John M. Perry, the following described property, to wit:

A plantation situated in the parish of Madison, in the State of Louisiana, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the western district of Orleans territory to Charles Collins, in section 9, township 16, range 15 east, containing six hundred and forty acres, more or less, being the same which was purchased by Samuel Anderson from Lilbourne P. Perry and Clayton Tiffin, by act passed before R. C. Downs, parish judge of said parish, on the 10th day of April, A. D. 1838, together with all the stock, tools, and implements thereto belonging, and all the furniture and appertenances to the same, in any manner appertaining, together with the following described negroes, slaves for life, attached to said plantation, viz: Anderson, aged about 36 years, July Ann his wife, 26, Betsy, William, and Everett, their children, all aged under ten years; Sandy, 30, Letha, his wife, 28, and their children, Melinda, 12, Julia, Hutchinson, and Anny, under ten years; George, 34, Rhoda his wife, 34, and Airy, their daughter, 13; Harry, 40, Eliza, his wife, 30, and their children, John, 17, Nancy, 13, Milly, Squire, Peter, Celia, and Harry, under ten years of age; Jesse, 28; Fountain, 40; Sally, 30; Ned, 40; Jordon, 36; Howden, 25; Elijah, 23; Charles, 15; Dick, 24; Betty, 22; Bob, 36; Abby, 40; Katy, 45; Joe, 28; Louisa, 18, and child Robert, an infant; Susan, 18; Matilda, 19; Sarah, 20; Jackson, 20; Harrison, 21; Henry, 22; Paris, 13; Jane Johnson, 18; Jane Miller, 22, her child Rachael, an infant; and Overton, aged about 25 years. And what you do in the premises, you make due return thereof, together with this writ, according to law.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 27th June, A. D.
[SEAL.] 1843, and of the independence of the United States the sixty-fifth year.

(Signed) D. N. HENNEN, *Clerk.*
By H. B. PAGE, *D'y Clk.*

Marshal's return.

Received, July 3d, 1843, and on the 5th day of July, 1843, I executed this writ by placing John M. Perry in possession of all the within described property.

(Signed) A. SIDNEY ROBERTSON,
United States Marshal.
By J. L. HYNES,
Deputy U. S. Marshal.

And afterwards, to wit, on the 19th day of July, in the year of our Lord one thousand eight hundred and forty-three, the following bill of exceptions was filed in the clerk's office, to wit:

Circuit court of the United States, of the fifth circuit, in and for the eastern district of Louisiana, sitting in *chancery*.

LELBOURNE P. PERRY & CLAYTON TIFFIN
vs.
NELSON F. SHELTON, SAMUEL ANDERSON, ROBERT ANDERSON, and others.

On the trial of this case, the complainants offered in evidence the deposition of George W. Groves, to which the following objections were offered by the counsel of Nelson F. Shelton:

1st. Because taken in violation of the rules of the Supreme Court, requiring the same to be taken within three months (rule 69) after the cause was at issue.

2d. Because it contradicts the deed from complainants to Samuel Anderson, the 11th day of April, 1838, and establishes facts beyond the same, and conversation since the deed; and said defendants extends this exception to all testimony to the same effect.

3d. Because it contains evidence of the contents of records, which are the best evidence, and exclude secondary evidence, and contradicts the record of Lelbourne P. Perry vs. Samuel Anderson.

4th. Because it consists of hearsay evidence, and evidence of the declaration of the complainants, which is no evidence in their favor, and of Samuel Anderson, out of the presence of Nelson F. Shelton, and therefore not binding upon him.

Also the deposition of Bennett A. Crawford, to which the following objections were offered:

1st. That a licensed attorney cannot be permitted to prove that he filed an answer to a suit, without authority from the defendant.

2d. That the complainant Lelbourne P. Perry cannot, by verbal testimony, contradict a record to which he was a party.

3d. That a judgment of the circuit court of the United States cannot be annulled, collaterally, and by parol testimony, but can only be annulled in a direct suit for that purpose.

4th. That a judgment cannot be annulled unless suit be brought for the purpose, within one year, and unless the same be brought before the judgment has been executed; and that third parties, holding under the execution, cannot be effected by it.

Also the deposition of Hugh W. Dunlap, to which the following objections were made:

1st. That it consists of declarations of Samuel Anderson, which are not binding upon Nelson F. Shelton—that the receipt of J. H. Martin, dated the 22d October, 1839, proved by him, is not binding upon said Shelton, because the witness did not see it given, and does not know when it was given; because it is a private writing to which Shelton is not a party; because it contradicts the record of a suit brought upon said note by Lelbourne P. Perry, the 23d day of November, 1839, in which the petition is signed by said Martin as one of the counsel.

That the deposition consists of declarations of Lelbourne P. Perry, one of the complainants in this cause, which are not evidence for him.

That the proof that Lelbourne P. Perry had left this country in 1838, consisted of his own declarations only, and was not admissable in this suit, if offered to shew that the court had not jurisdiction in the case of Mosely and Bouldin against Perry and Tiffin.

That the testimony of said Dunlap tends to contradict and alter the deed from complainants to Samuel Anderson, dated the 11th of April, 1838.

That all testimony offered on the hearing, and all documents or exhibits not referred to in the bill and answers, and filed on the trial, on the ground that respondents had no notice of the same, and that the admission in evidence of such testimony, documents, and exhibits, is contrary to the rules and practice of all courts of equity, and of the Supreme Court, regulating the practice of this court.

Also made objections to the introduction of copies of the notes, as follows:

1st. Because the original notes are not produced.

2d. Because part and not the whole of a record is produced.

3d. Because the endorsement on the first note is not proved.

4th. Because the date to the copy of the endorsement is not proved, and therefore not binding upon third parties.

But the court, after argument, overruled the objections, and admitted the evidence and documents aforesaid; and the opinion of the court on these points, the counsel of said Shelton excepts, and prays the court to sign his bill of exceptions, that the same may appear of record, which is done.

NEW ORLEANS, *July 20th*, 1843.

Signed at this date, agreeable to consent of parties at the trial.

(Signed) THEO. H. McCALEB,
U. S. judge.

And afterwards, to wit, on the 24th day of October, in the year of our Lord one thousand eight hundred and forty-three, the following bond was filed in the clerk's office, to wit:

Know all men by these presents, that we, John M. Perry, John Millikin, and Junius Amis, are held and firmly bound unto Samuel Anderson, Robert Anderson, and Nelson F. Shelton, in the full sum of twenty thousand dollars, lawful money of the United States, for the payment whereof, to the said Samuel Anderson et als., their heirs, executors, and assigns, we jointly and severally bind ourselves, our respective heirs, executors, and assigns, firmly by these presents.

Witness our hands and seals hereunto affixed, at the parish of Madison, State of Louisiana, this 15th day of July, anno domini 1843.

1562.

Now, the condition of the above obligation is such, that if the above named John M. Perry shall well and truly keep and deliver unto Samuel Anderson et al. all the property described and set forth in a certain writ of possession, issued out of the United States circuit court at the suit of Clayton Tiffin and Lelbourne P. Perry, and numbered 906 on the docket of said court, in the like good order in which he received it, at the order of said court, then the foregoing obligation to be null and void, otherwise to remain in full force and virtue.

Signed, JOHN M. PERRY, [SEAL.]
JOHN MILLIKIN, [SEAL.]
JUNIUS AMIS. [SEAL.]

Witness[es]: J. H. CONLY,
SAM. F. BUTTERWORTH, as to J. Amis only.

Evidence.—Petition.

UNITED STATES OF AMERICA,
Ninth judicial circuit court of the U. S.
for the eastern district of Louisiana.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LELBOURNE P. PERRY. } February term, 1839.

To the honorable the judges of the ninth circuit court of the United States, holding sessions of said court at the city of New Orleans, in and for the eastern district of Louisiana, the petition of Hillery Mosely, who is a citizen of the State of Virginia, residing in the county of Charlotte in said State last named, and of William W. Bouldin, who is also a citizen of the State of Virginia, residing in said county of Charlotte, the said Bouldin suing and acting herein for the use and benefit of the said Hillery Mosely, most respectfully shows:

That John M. Perry and Lelbourne P. Perry, who are citizens of the State of Louisiana, and residing in the parish of Madison in said State, in the eastern district of Louisiana, are justly and legally, jointly and severally, indebted to your petitioner, in solido, in the sum of seven thousand five hundred and sixty dollars, with interest on the same at the rate of eight per centum per annum, from 31st day of December, 1838, for this, to wit: on the twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-eight, the said John M. Perry, by the name and signature of John M. Perry; the said Lelbourne P. Perry, by the name and signature of L. P. Perry; John F. Brodnox, by the name and signature of Jno. F. Brodnox; Robert H. Brodnox, by the name and signature of R. H. Brodnox; and Hugh R. Austin, by the name and signature of H. R. Austin, made their certain writing obligatory, and delivered the same to your petitioners, whereby they, and each of them, promised and bound themselves, in solido, and each of

them, to pay to your petitioners or order, on or before the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty-eight, the sum of seven thousand five hundred and sixty dollars; by reason of all which your petitioner alleged the said John M. Perry, Lelbourne P. Perry, John F. Brodnox, Robert H. Brodnox, and Hugh R. Austin, become jointly and severally liable and bound, in solido, to pay to your petitioners the said sum of seven thousand five hundred and sixty dollars, with interest as aforesaid; all which will more fully appear by reference to said writing obligatory, which is hereunto annexed, and prayed to be taken as a part of this petition.

Your petitioners show further that, although often amicably requested so to do, yet the said John M. Perry and Lelbourne P. Perry have hitherto wholly failed and refused to pay to your petitioners the said sum of money, or any part thereof; and your petitioners alleged further, that said John M. Perry and Lelbourne P. Perry are on the eve of leaving the State without leaving in it sufficient property to satisfy said claim or judgment, and without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against them before their departure.

In consideration of all the premises, your petitioners pray that the said John M. Perry and Lelbourne P. Perry may be cited to appear and answer to this petition; and, after due proceedings had, that they may be jointly and severally adjudged and condemned in solido, and in solido to pay to your petitioners the said sum of seven thousand five hundred and sixty dollars, with interest on the same as aforesaid, and costs of suit. Your petitioners pray further, that in consideration of the premises, and of the affidavit written at the foot of this petition, a writ of attachment may issue in the premises, and the property of said John M. Perry and Lelbourne P. Perry, and of *costs* of them, may be attached, and be held by the marshal for the better security of the satisfaction of the demand of your petitioners, till the further order of this honorable court. Your petitioners pray for all such general and further relief as the nature and justice of their case will allow; and as in duty, &c.

(Signed) STOCKTON PEYTON & PIERCE,
Counsel and attorneys for petitioners.

Affidavit.

Hillery Mosely, one of the plaintiffs in the above suit, makes oath that John M. Perry and Lilbourne P. Perry, the defendants in said suit, are, jointly and severally, justly and legally, indebted, in solido, to this affiant and William W. Bouldin, who are the plaintiffs in said suit, in the sum of seven thousand five hundred und sixty dollars, together with interest as stated in the within petition; that all the material allegations of the foregoing petition are true; and that said John M. Perry and Lelbourne P. Perry are on the

eve of leaving this State forever, without leaving in it sufficient property to discharge the said claim or judgment, and that he does not make this affidavit with the intention of vexing said John M. Perry and Lilbourne P. Perry, but only in order to secure his demand.

Signed, HILLERY MOSELY.

Sworn to and subscribed before me, [at] New Orleans, 11th January, 1839.

Signed, J. Q. A. HOIT, *D'y clerk.*

Note annexed.

$7,560. On or before the [the original torn] December, one thousand [the original torn] and thirty-eight, we, or either of us, promise and bind ourselves and heirs to pay Hillery Mosely and William W. Bouldin, or order, the just sum of seven thousand five hundred and sixty dollars, without offset, either in law or equity, for value received. Signed and seal[ed] this, the 22d day of January, 1838.

Signed, JOHN M. PERRY, [SEAL.]
L. P. PERRY. [SEAL.]

VICKSBURG, *Warren county, Mississippi.*

Order for attachment.

Let an attachment issue as prayed for, on plaintiffs giving bond, with security, in the sum of twelve thousand dollars, conditioned according to law.

Signed, P. K. LAWRENCE, *U. S. judge.*

Motion.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

Circuit court of the 9th judicial circuit of the United States, in and for the eastern district of Louisiana.

On motion of Peyton and T. N. Pierce, counsel for the plaintiffs, it is ordered, that the plaintiffs be allowed to withdraw the attachment bond filed in this case.

Receipt.

Received of John Winthrop, clerk of the United States court, the bond filed in the case of Mosely & Bouldin vs. John M. Perry & L. P. Perry, for $12,000, as security for the writ of attachment prayed for.

NEW ORLEANS, *January* 12, 1839.

Signed, HILLERY MOSELY.

Supplemental petition.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

To the honorable the judges of the circuit court of the 9th judicial circuit of the United States, in and for the eastern district of Louisiana.

The supplemental petition of Hillery Mosely and William W. Bouldin, citizens of the State of Virginia, to the petition formerly filed in this court in the above entitled case, the leave of the court being first had and obtained for the filing the same, respectfully shows, in addition to what is stated in the original citation, that John M. Perry and Lilbourne P. Perry are about to leave this State without leaving in it sufficient property to satisfy the petitioners' claim; wherefore petitioner[s] pray that, in consideration of the affidavit filed in this case, *and* that said John M. Perry and Lilbourne P. Perry be arrested and held to bail, and that after due proceedings had be condemned, in solido, to pay petitioners the sum of seven thousand five hundred and sixty dollars, and interest and costs as prayed for in the original petition, and for general relief.

(Signed) STOCKTON PEYTON & T. N. PIERCE.

Order.

Let the defendants be held to bail in the sum of eleven thousand three hundred and forty dollars.

Signed, P. K. LAWRENCE,
U. S. judge.

Citation.

CIRCUIT COURT OF THE UNITED STATES,
Ninth circuit for the eastern district of Louisiana:

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

To Lilbourne P. Perry, residing in the parish of Madison, State of Louisiana.

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the circuit court of the United States, 9th circuit and eastern district of Louisiana, in the city of New Orleans, within ten days from the service hereof, or judgment will be given against you by default.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Or-
[L. S.] leans, this 12th day of January, 1839, and 63 year of the independence of the United States.

(Signed) J. Q. A. HOIT, *D'y clerk.*

A further delay of one day for every ten miles the place of service is distant from that where the court is held is allowed by law.

Marshal's return.

Defendant, L. P. Perry, could not be found, after diligent search and enquiry. Returned, Feb. 23d, '39.

(Signed) J. P. WALDEN, *D'y marshal.*

Rule.

Circuit court of the United States for the eastern district of Louisiana.

MOSELY & BOULDIN
vs.
J. M. PERRY and L. P. PERRY.

On motion of the defendants, by their attorney, it is ordered that the plaintiffs shew cause, on Saturday next, why the bail in this case should not be set aside, on the ground—

1st. Of the insufficiency of the affidavit;

2nd. That the said affidavit is not in conformity to law;

3rd. That the amended petition or affidavit of the plaintiffs, alledging the defendants, John M. Perry and Lelbourne P. Perry are about to leave the State without leaving in it sufficient property to satisfy their petitioners' claim, is not sworn to.

CLERK'S OFFICE, U. S. DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
New Orleans, Febr'y 21st, 1839.

I certify the foregoing to be a true copy of the original on file in this office.

(Signed) JNO. WINTHROP, *Clerk.*

Marshal's return.

Received Feb'y 21st, 1839; and, on the same day, served a copy of the within rule on Bailey Peyton, esq., in person, and a copy of the within on T. N. Pierce, esq., in person. Returned Feb. 21st, 1839.

Signed, J. H. HOLLAND, *Marshal.*

Citation.

Circuit court of the United States, 9th circuit, for the eastern district of Louisiana.

MOSELY & BOULDIN
vs.
JOHN M. PERRY and L. P. PERRY.

To John M. Perry, residing in the parish of Madison, State of Louisiana:

You are hereby summoned to comply with the prayer of the an-

nexed petition, or file your answer thereto, in writing, in the office of the clerk of the circuit court of the United States, 9th circuit and eastern district of Louisiana, in the city of New Orleans, within ten days from service hereof, or judgment will be given against you by default.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of January, 1839, and 63 year of the independence of the United States.

A further delay of one day for every ten miles the place of service is distant from that where the court is held is allowed by law.

Marshal's return.

Served copy of petition and other documents thereto annexed, and copy of the within citatation on John M. Perry in person, at the parish of Madison, 450 miles from New Orleans. Returned Febr'y 22nd, 1839.

Signed, J. P. WALDEN, *Dep'ty marshal.*

Writ of arrest.

UNITED STATES OF AMERICA:

MOSELY & BOULDIN
vs.
JOHN M. PERRY and L. P. PERRY.

Circuit court United States, 9th circuit, for eastern district of Louisiana.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, in the name of the United States of America, and the circuit court of the United States for the ninth circuit and eastern district of Louisiana, to arrest the bodies of the defendants, John M. Perry and Lilbourne P. Perry, and them confine till they shall give security that they shall not depart from said State without the leave of our said court, in the sum of eleven thousand three hundred and forty dollars.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this 12th day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and in the 63 year of the independence of the United States.

Signed, J. Q. A. HOIT, *Deputy clerk.*

Marshal's return.

Received 12th January, 1839; and, on the 18th same month, arrested and took defendant, John M. Perry, into my custody, from whence he was released by giving bond, with Z. H. Rawlings, Charles Johnson, and H. Lewis as sureties, in the parish of Madi-

son, 450 miles from New Orleans, in the eastern district of Louisiana; which bail bond is herein returned; and Lilbourne P. Perry could not be found, after diligent search and enquiry—and executing this writ in all other things as the law directs. Returned February 23d, 1839.

(Signed) J. H. HOLLAND, *Marshal.*

Bond.

Know all men by these presents, that we, John M. Perry, as principle, Z. H. Rawlings, Charles Johnson, and H. Lewis are held and bound unto John Henry Holland, marshal of the United States for the eastern district of Louisiana, in the sum of eleven thousand three hundred and forty dollars, lawful money of the United States; for the payment whereof to the said John Henry Holland, his heirs, executors, administrators, and assigns, we jointly and severally bind ourselves, our respective heirs, executors, and administrators, and assigns, firmly by these presents; as witness our respective names hereunto signed and affixed, in the parish of Madison, State of Louisiana, in the said eastern district of Louisiana, this 18th day of January, in the year of our Lord one thousand eight hundred and thirty-nine.

The condition of the above obligation is such, that if the said John M. Perry, now in custody of the said marshal under a certain order of arrest or bail, issued from the honorable the circuit court of the United States for the said eastern district of Louisiana, in the ninth circuit, in a certain suit entitled Mosely & Bouldin vs. John M. Perry & Lilbourne P. Perry, but has been released from custody at the time, by reason of the execution and delivery of these presents, shall not depart the State of Louisiana without the leave of said court, or in case he, the said John M. Perry, should depart the said State of Louisiana without such leave, of the above bounded Z. H. Rawlings, Chs. Johnson and H. Lewis, shall pay to the said marshal the amount for which definitive judgment shall be rendered in the before mentioned cause, then the foregoing obligation shall be void, but otherwise shall be and remain in full force.

Signed, JOHN M. PERRY, [SEAL.]
ZACH. H. RAWLINGS, [SEAL.]
CHARLES JOHNSON, [SEAL.]
H. LEWIS. [SEAL.]

Signed, sealed, and delivered, in the presence of—
L. C. BACON.

Answer of Defendants.

HILLERY MOSELY & WM. W. BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

Circuit court of the United States for the eastern district of Louisiana:

The defendants for answer deny all and singular the allegations

of the plaintiffs, as set forth by them in their petition; the defendants for answer say, that the plaintiffs are indebted to them the sum of twenty-six hundred dollars, for which they pray for judgment in reconvention, for this, to wit, that the said plaintiffs sold to them a lot of negroes for the sum of seven thousand five hundred and sixty dollars; that one of the said negroes, a negro man, aged about years, named was diseased at the time of the sale, which was unknown to defendants, which disease was of long standing, and of which he has since died; that the said negro man was estimated and valued at fourteen hundred dollars, which has proved a total loss to defendants; and that the rest of the negroes in said lot were diseased and unsound, and from which said defendants have sustained a further loss of twelve hundred dollars; making, in all, the said sum of twenty-six hundred dollars as aforesaid.

The defendants, for further answer, pray that William W. Bouldin, one of the plaintiffs, may be required to answer on oath the following interrogatories.

1st. Did you sell a lot of negroes to plaintiff as joint partner with Hillery Mosely? If yea, state whether you did not know that one of the negro men in said lot, valued and estimated at fourteen hundred dollars, was diseased at the time of sale.

2nd. Did you, or not, know that the said negro man had been sick for a long period of time previous to the sale?

3rd. Did you, or not, know that the residue of the said lot of negroes were diseased at the time of sale?

Signed, B. A. CRAWFORD,
Attorney for defendants.

Rule.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY &
LILBOURNE P. PERRY.

Circuit court of the United States, for the eastern district *district* of Louisiana.

On motion of the defendants, by their attorney, it is ordered that the plaintiffs show cause, on Saturday next, why the bail in this case should not be set aside, on the ground—

1st. Of the insufficiency of the affidavit of the plaintiffs alledging that defendants "John M. Perry and Lilbourne P. Perry are about to leave the State, without leaving in it sufficient property to satisfy their petitioners' claim," is not sworn to.

Signed, B. A. CRAWFORD,
Attorney for defendants.

Amended answer.

MOSELY & BOULDIN, }
vs.
JOHN M. PERRY, &c. }

Circuit court United States, for the eastern district of Louisiana.

The amended answer of the defendants, (the leave of the court first had and obtained,) for answer says, that the bond or note upon which this suit is brought was given for a lot of negroes, sold by the plaintiff to the defendant John M. Perry, and charges that one of the negro men of said lot, named , aged about years, was diseased at the time of sale, of long standing, which was unknown to the defendants, but known to the plaintiffs, of which said disease the said negro man has since died, and that he was estimated and valued at fourteen hundred dollars, which has proved a total loss to the defendants; and also charges that the rest of the negroes in said lot were diseased and unsound, and incapacitated for ordinary business, which was unknown to the defendant John M. Perry at the time of sale, but known to the plaintiffs, from which the defendants have sustained a further loss of twelve hundred dollars; making, in all, the sum of twenty-six hundred dollars, for which he is in justice and equity entitled to a credit on said note or bond.

The said defendants pray for a trial by jury.

Signed, B. A. CRAWFORD,
Attorney for defendants.

Order for commission.

MOSELY & BOULDIN, }
vs.
PERRY, &c. }

Commission to take deposition in the State of Mississippi.

Signed, B. A. CRAWFORD,
Attorney for defendant.

Notice of trial.

Circuit court of the United States, ninth judicial circuit, and eastern district of Lousiana:

MOSELY & BOULDIN }
vs. } No.
J. M. PERRY & L. P. PERRY. }

At the request of Balie Peyton, esqr., of counsel for the plaintiffs, this cause is fixed for trial for Tuesday, the 18th day of June, 1839, as per order of court, entered of record *of record* on the eighth day of June, 1839.

Witness my hand and the seal of the said court, at the city
[L. S.] of New Orleans, this fifteenth day of June, 1839.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received June 15th, 1839, served same day on B. A. Crawford, esqr., attorney, by leaving a copy of this at his office.

(Signed) L. C. BACON, *Deputy Marshal.*

Verdict.

NEW ORLEANS, 18*th June*, 1839.

The jury find a verdict for the sum of seven thousand five hundred and sixty dollars.

(Signed) LOUIS J. FOURNSQUET, *Foreman.*

Fi. fa.

Circuit court of the United States, for the 9th circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from John M. Perry and Lilbourne P. Perry, jointly and severally, the sum of seven thousand five hundred and sixty dollars, with interest of five per centum per annum, from the eleventh January, eighteen hundred and thirty-nine, till paid, and costs of suit herein taxed, to wit:

Clerk's fees now due - - - - -	$25 83⅓
Winthrop's. "	
Marshal's up to July 9th, 1839 - - -	62 50

Cash which Mosely and Bouldin lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said John M. Perry and Lilbourne P. Perry, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said John M. Perry and Lilbourne P. Perry, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said John M. Perry and Lilbourne P. Perry, in your district, whereof they were owner, on the 18th day of June, 1839, into whose hands soever the same may have come. And that you have those moneys before our said court, to render to the said Mosely and Bouldin, for the judgment aforesaid, on the fortieth day from date hereof, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this 9th day of July, A. D. [L. s.] 1839, and 64th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received, Wednesday, the 24th day of July, 1839, and demanded payment at the residence of the within named defendants John M. Perry and Lilbourne P. Perry, to satisfy the within execution, which was refused or neglected; I then made diligent search and enquiry for property to satisfy the within fi. fa., but I could not find any property belonging to the within named defendants John M. Perry and Lilbourne P. Perry, nor was there any shown to me, or pointed out by the plaintiffs or defendants; I therefore return this execution in no part satisfied.

Friday, 16th day of August, 1839, parish of Madison, La., 460 miles from New Orleans.

(Signed) J. N. DONOHUE,
Deputy U. S. Marshal.

Order for fi. fa.

VICKSBURG, *20th September*, 1839.

JOHN WINTHROP, esqr., *C. M. C. court, New Orleans.*

DEAR SIR: In the matter of Mosely and Bouldin *vs.* John M. Perry and Lilbourne P. Perry, "in which judgment was rendered at last term of the court in favor [of] plaintiffs, a writ of fieri facias was issued, and the deputy marshal made return "that no property could be found."

He tells me that he was ignorant as to the attorneys of the plaintiffs, and therefore he did not call on me. I can show property amply sufficient to pay four or five times the amount of our demand. You will please to issue without delay "an alias fieri facias in the above mentioned case, and put it into the hands of the marshal, whom you will please to allow to read this letter.

I am, dear sir, yours, &c.

Signed, R. C. STOCKTON,
Attorney for petitioners.

Circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, (as you have heretofore been commanded,) that you demand from John M. Perry and Lilbourne P. Perry, jointly and severally, the sum of seven thousand five hundred and sixty dollars, with interest at five per cent. per annum, from the eleventh day of January, eighteen hundred and thirty-nine, till paid, and costs of suit herein taxed, to wit:

Clerk's fees now due - - - - - $30 83¾
Winthrop's.
Marshal's.

Cash which Mosely and Bouldin lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said John M. Perry and Lilbourne P. Perry, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said John M. Perry and Lilbourne P. Perry, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said John M. Perry and Lilbourne P. Perry, in your district, whereof they were owners on the 18th day of June, 1839, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Mosely and Bouldin, for the judgment aforesaid, on the 3rd Monday of December next, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 5th day of October,
[L. s.] A. D. 1839, and 64 year of the independence of the United States.

(Signed) A. PIERSE, *Deputy clerk.*
For D. N. HENNEN, *Clerk.*

Marshal's return.

Received 23d day of October, 1839, and on the same day made demand of the amount of the within fi. fa., at the residence of the within named defendants John M. Perry and Lilbourne P. Perry, which was refused. I seized, on the 23rd day of November, 1839, a debt due by Samuel Anderson to the within named Lilbourne P. Perry, for forty thousand dollars. There *was* three notes given by said Anderson to said Perry, and mortgage on fifty slaves and six hundred and forty acres of land, to receive the payment of said debt to satisfy this fi. fa., and after advertising the said claim ten entire days from the last day of the notice of seizure, and having appraisers appointed according to law, who appraised said property to be worth twenty-eight thousand dollars, cash valuation, on the 10th day of December, 1839, and then, on the same day, offered the property for sale for cash, and repeatedly crying it—there was no sale for want of a bid to the amount required by law, and then I advertised the same property, and sold the same on the 4th day of January, 1840, on a credit of twelve months, when Samuel Anderson became the purchaser thereof for the sum of five thousand dollars, he being the highest and last bidder, for which he gave his bond, with John B. Bemiss and Aaron Lilly as security; which bond I received, and the said bond is herewith returned; four hundred and thirty miles from New Orleans.

(Signed) M. MARIGNY, *U. S. marshal.*
By JOHN. N. DONOHUE,
Deputy U. S. marshal.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

We command you, that you take the bodies of John M. Perry and Lilbourne P. Perry, if they shall be found in your district, and that you safely keep them so that you have their bodies before the circuit court of the United States of America, ninth judicial circuit and eastern district of Louisiana, to be held at the city of New Orleans, in the said district, on the first Monday of April, 1840, to satisfy Mosely and Bouldin, of the sum of seven thousand five hundred and sixty dollars, less the sum of five thousand dollars received on the 4th day of January, 1840, on a writ of fi. fa. issued 5th October, 1839, together with interest of 5 per cent. per annum, from 11th day of January, 1839, till paid, and costs of suit hereon taxed. Cash which the said Mosely and Bouldin lately recovered by judgment of the said circuit court of the United States of America, for the eastern district of Louisiana; and you have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, [L. s.] this 16th day of January, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States of America, the 64th year.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Costs—Clerks—(D. N. H. - - - -	$35 83
J. Winthrop's costs, late clerk - - - -	47 83

Marshal's return.

Received, Thursday, the 16th January, 1840, and after diligent search and enquiry, the within named defendants, John M. Perry and Lilbourn P. Perry, could not be found in the eastern district of Louisiana—distance five hundred miles from New Orleans.

(Signed) M. MARGINY, *U. S. marshal.*
By JOHN N. DONOHUE,
Deputy U. S. marshal.

Transfer.

STATE OF LOUISIANA, *parish of Madison:*

Whereas I, John N. Donohue, deputy United States marshal, in and for the eastern district of the State of Louisiana, by virtue of a writ of fieri facias issued from the circuit court of the United States for the ninth circuit in and for district and State aforesaid, at the suit of Mosely & Bouldin vs. John M. Perry and Lilbourne P. Perry, I did seize a certain debt owing by Samuel Anderson to said Lilbourne P. Perry as evidenced by three promissory notes, dated 1st of March, 1839, due in the years 1842, 1843, and 1844, each for

the sum of thirteen thousand three hundred and thirty-three dollars, payable by said Samuel Anderson to the said Lelbourne P. Perry, which notes are "paraph*in*" on the 9th of July, 1839, together with the mortgage, intended to secure said notes or debts, recorded in the office of the parish judge of the parish of Madison, in the parish and State aforesaid, in the record book of conventional and legal mortgages, pages 27 and 28, where there are fifty slaves and six hundred forty acres of land mortgaged to secure the payment of said notes and mortgage, seized as the property of said Lilbourne P. Perry, and having exposed the same to public sale as aforesaid, on a credit of twelve months, when Samuel Anderson became the purchaser thereof at the price of five thousand dollars, for which he gave his bond with John B. Bemiss and Aaron Lilly as his securities, payable in twelve months after the date thereof, all in due form of law, and which bond I hereby acknowledge to have received.

Now, therefore, know all men by these presents, that I, the said deputy as aforesaid, do, in consideration of the premises, and by virtue of the act in such cases made and provided, *do* grant, bargain, sell, assign, and set over to the said Samuel Anderson, his heirs and assigns, all the right, title, and interest or demand, which the said Lilbourne P. Perry had, in and to the said debt, notes, and mortgage, as before described on the twenty-third day of November, A. D. 1839, or at any time since, or to any part thereof; to hold the same to the said Samuel Anderson, his heirs and assigns forever, hereby subrogating (as far as my act in the premises can) said Samuel to all the rights which the said Lilbourne P. Perry had or has, in, under, and too the aforesaid mortgage; and the said Samuel Anderson being present hereby accepts this conveyance, and hereby specially mortgages the above described debt and mortgage to secure the final payment of the purchase money, and all interest and costs that may accrue in the premises.

Done and passed in the States and parish aforesaid in presence of John B. Bemiss and Aaron Lilly, competent witnesses, who have signed with me, said deputy U. S. marshal, and Samuel Anderson, this 4th day of January, 1840 and said Samuel Anderson before signing.

Signed,. JOHN N. DONOHUE,
Dep'y U. S. Marshal.

Accepted, SAMUEL ANDERSON.
JOHN B. BEMISS,
AARON LILLY.

As an indemnity to John B. Bemiss and Aaron Lilly, my securities on the twelve months' bond referred to in this acc't, I hereby transfer and assign the same to the joint order of the said John B. Bemiss and Aaron Lilly; this assignment to be void upon said Samuel Anderson paying the bond given in this case.

Signed, SAMUEL ANDERSON.
January 4th, 1840.

Certificate annexed.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing act is duly recorded in my office, in record of conventional mortgages and privileges, book A, pages 55 & 56, on this twenty-seventh day of January, A. D. 1840.

Witness my signature and official seal.

[L. S.] Signed, RICH'D CHA. DOWNES,
Parish Judge.

Petition.

STATE OF LOUISIANA, *parish of Madison:*

To the honorable B. G. Tenny, judge of the ninth district court for the State of Louisiana, holding sessions in and for the parish of Madison, State of Louisiana:

The petition of Nelson F. Shelton, who resides in Gouchland county, State of Virginia, and Robert Anderson, who resides in *Kenawaha* county, State of Virginia, with respect would represent, that Samuel Anderson, who resides in the parish of Madison, State of Louisiana, is justly indebted to your petitioners in the sum of fifty-four thousand five hundred and fifty dollars, for this, to wit: on the seventeenth day of March, in the year of our Lord 1840, the said Samuel Anderson, by public act of mortgage passed before Alfred J. Lowry, a notary public, duly commissioned and sworn, in and for the parish of Madison, State of Louisiana, acknowledged himself to be justly indebted to the said Nelson F. Shelton, of Gouchland county, Virginia, in the sum of forty-five thousand five hundred and fifty dollars; and also indebted to your petitioner, Robert Anderson, of *Kemawaha* county, State of Virginia, in the sum of nine thousand dollars, and being so indebted to your petitioners as aforesaid, he, the said Samuel Anderson, specially mortgaged and hypothecated (to secure the payment of the said sum, forty-five thousand five hundred and fifty dollars, to the said Nelson F. Shelton, and nine thousand dollars to the said Robert Anderson, within twelve months, from the said seventeenth day of March, A. D. 1840,) to the said Nelson F. Shelton and to the said Robert Anderson, all of the following described property, land, and negroes, situated in the parish of Madison, to wit: First—a plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, and being the same tract of land that was originally confirmed by the board of commissioners of the Western district of Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres more or less, and was acquired by this mortgager by purchase from Lilbourne P. Perry and Clayton Tiffin, by act passed before Richard Charles Downes, parish judge, on the tenth day of April, 1838. 2d. The following men-

tioned negro slaves for life, now on said plantation: Anderson, aged about thirty-six years, Julia Ann, his wife, aged about twenty-six years, Betsy, William and Everett, their children, all under ten years of age; Sandy, aged thirty years, Letha, his wife, aged about twenty-eight years; and their children, Malinda, twelve years, Julia, Hutchinson, and Aury, under ten years of age; George, thirty-four years of age, Rhoda, his wife, thirty-four years, and their child Amy, aged thirteen years; Hardy, aged forty years, and his wife Eliza, aged thirty years; and their children, John, aged seventeen years, Nancy, aged thirteen years, Milly, Squire, Peter, Clia and Henry, under ten years of age; Jesse, aged twenty-eight; Fountain, aged forty; Sally, aged thirty; Ned, aged forty; Jordan, aged thirty-six years; Howdin, aged twenty-five; Elijah, aged twenty-three years; Charles, aged fifteen years; Dick, aged twenty-four years; Billy, aged twenty-two years; Bob, aged thirty-six years; Abby, aged about forty years; Joe, aged about twenty-eight years; Katy, about forty-five years; Louisa, aged about eighteen years, and child Robert, an infant; Susand, eighteen years; Matilda, aged nineteen; Sarah, aged twenty; Jackson, aged twenty; Harrison, aged twenty-one years; Paris, aged thirteen; Jane Johnson, aged eighteen; Jane Miller, aged twenty-two years, and child Rachel, an infant; and Overton, aged about twenty-five years, which said mortgage was accepted by the said Robert Anderson for himself and as agent for said Nelson F. Shelton, which said mortgage, a duly certified copy of which is herewith filed and prayed to be taken as part of this petition. Your petitioner Nelson F. Shelton shows, that by public authentic act passed on the 23d day of March, A. D. 1841, before Richard C. Downes, esq'r, parish judge of the parish of Madison, he in person notified the acceptance of said mortgage so made by said Robert Anderson as aforesaid, a duly certified copy of which last act of ratification or acceptance is here filed, and prayed to be taken as part of this petition. Now your petitioners show, that the said sum of fifty-four thousand five hundred and fifty dollars, is realy due and owing by the said S. Anderson to your petitioners; that is to say, the sum of forty-five thousand five hundred and fifty dollars to your petitioner Nelson F. Shelton, and the sum of nine thousand dollars to your petitioner Robert Anderson, and the payment of the said sum of money *have* been demanded from the said Anderson before instituting this suit. The premises considered, your petitioners pray that an order of seizure and sale be granted them against the property of the said Samuel Anderson mentioned and described in the aforesaid mortgage, (which your petitioners shew to be now in his, said S. Anderson's, possession;) and that after due and legal notices have been given to the said S. Anderson, that the sheriff of the parish of Madison, may be ordered to seize and sell, after due legal advertisements, for cash, so much of said mortgaged property as will pay and satisfy to your petitioner, Nelson F. Shelton, the said sum of forty-five

thousand five hundred and fifty dollars; and also so much thereof as will satisfy your petitioner, Robert Anderson, the sum of nine thousand dollars, together with all costs, interests, &c., which have or may accrue on said sums of money; your petitioners pray for judgment, order, and decree, pursuant to above prayers, and for general relief in the premises, &c.

(Signed) JOHN B. BEMISS,
Attorney for petitioners.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered that on this seventeenth day of March, in the year of our Lord one thousand eight hundred and forty, before me, Alfred J. Lowry, a notary public in and for the above named parish and State, duly commissioned and sworn, and in presence of the witnesses hereafter named and undersigned, personally came and appeared Samuel Anderson, a citizen of the above named parish and State, who declared that wherein he is truly and justly indebted to Nelson F. Shelton, of Goochland county, in the State of Virginia, in the full and lawful sum of forty five thousand five hundred and fifty dollars; and he further declares that he is also justly indebted to Robert Anderson, of Kenawha county, State of Virginia, here present and accepting for himself and Nelson F. Shelton, in the full and lawful sum of nine thousand dollars. Now, therefore, in order to secure the full and punctual payment of the above mentioned sums of money, amounting in all to the sum [of] fifty four thousand five hundred and fifty dollars, ($54,550) to the said Nelson F. Shelton and Robert Anderson, within twelve months (12 months) from the date of this act of mortgage, he, the said Samuel Anderson, does hereby specially mortgage and hypothecate, in favor of the said Nelson F. Shelton and Robert Anderson, all the following described property, lands and slaves, to wit: First—a plantation, situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, and being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager by purchase from Lilbourne P. Perry and Clayton Tiffin, by act passed before Richard Charles Downes, parish judge, on the tenth day of April, A. D. 1838. The following mentioned negro slaves for life, now on said plantation: Anderson, aged about thirty-six years, Julia Ann, his wife, aged about twenty-six years, Betsey, William, and Everett, their children, all under ten years of age; Sandy, aged thirty years, Letha, his wife, aged twenty-eight years, and their children, Malinda, twelve years, Julia, Huchinson and Amy, under ten years of age; George, thirty-four years of age, Rhoda, his wife, aged thirty-four, and their child Amy, aged thirteen years; Handy, aged forty years, and his wife Eliza, aged thirty

years, and their children, John, aged seventeen years, Nancy, aged thirteen years, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, aged twenty-eight; Fountaine, aged forty; Sally, aged thirty; Ned, aged forty; Jordon, aged thirty-six; Howden, aged twenty-five years; Elijahe, aged twenty-three years; Charles, aged fifteen years; Dick, aged twenty-four years; Billy, aged twenty-two years; Bob, aged about thirty-six years; Abby, aged about forty years; Katy, aged about forty-five years; Joe, aged about twenty-eight years; Louisa, aged about eighteen years, and child Robert, an infant; Susan, eighteen years; Matilda, aged nineteen; Sarah, aged twenty; Jackson, aged twenty years; Harrison, aged twenty-one years; Paris, aged thirteen years; Jane Johnson, aged eighteen years; Jane Miller, aged twenty-two years, and child Rachel, an infant; and Overton, aged about twenty-five years. He, the said mortgager, binding himself not to alienate or incumber the said mortgaged property to the prejudice of this mortgage. It being understood that there is a mortgage granted by the said Samuel Anderson, in favor of Lilbourne P. Perry, to secure the payment of the sum of forty thousand dollars, by act passed before R. C. Downes, parish judge, on the 9th day of July, A. D. 1839. And also, it is understood, that on the ninth day of July, A. D. 1839, the said Samuel Anderson granted a mortgage, in favor of Nelson F. Shelton, to secure the payment of the sum of forty-five thousand five hundred and fifty dollars, which act was passed before Richard C. Downes, parish judge.

And this mortgage is now granted instead and place of the above named mortgage. The parties waive the production of a certificate of mortgages on the above named land and negroes, and release me, notary, from any responsibility on account of said certificate not being produced.

Thus done and passed the day and year first above written, in presence of T. B. Scott and John B. Bemiss, witnesses hereunto required, and residing in this parish, who have signed these presents, together with the parties and me, notary, after due reading hereof.

Signed, SAMUEL ANDERSON,
ROBERT ANDERSON,
ROBERT ANDERSON for
NELSON F. SHELTON.

Teste: T. B. Scott,
John B. Bemiss.

A. J. LOWRY, *Notary Public.*

I certify that the foregoing is a true copy of the original act on file in my office, and recorded in book A, of conventional mortgages, pages 74 and 75, March 23d, 1841.

[SEAL.] Signed, RICH'D CHAS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered that, on this twenty-third day of March, A. D. eighteen hundred and forty-one, before me, Rich'd Charles Downes, parish judge and ex officio notary public in and for said parish, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Nelson F. Shelton, sen'r, a resident of Goochland county, in the State of Virginia, who declared that, whereas, by an act passed before Alfred J. Lowry, a notary public for said parish, dated March 17th, A. D. 1840, and recorded in my office March 31st, A. D. 1840, Samuel Anderson, of this parish, granted a special mortgage upon certain property described in said act in his favor, for the sum of forty-five thousand five hundred and fifty dollars, which act was accepted in his behalf by Robert Anderson, but without any written authority. Now, in order to perfect, ratify and confirm said act, he does hereby personally accept the same, with all the conditions and provisions therein contained. And to these presents also appeared the said Samuel Anderson, who declared that he hereby ratifies and confirms the said mortgage, and hereby intends to give it the same force and effect as if it had been personally accepted by the said Nelson F. Shelton since. Done and signed on the day and date first above written, in presence of James Pepper and William E. Walker, competent witness, who sign with said appearers, and judge and notary.

Signed, SAMUEL ANDERSON,
NELSON F. SHELTON, Sr.
WILLIAM E. WALKER,
JAMES PEPPER,
Signed, RICHARD CHARLES DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

I certify the foregoing to be a true copy of the original on file in my office, this 23d day of March, A. D. 1841.

[L. S.] (Signed,) RICHARD CHARLES DOWNES,
Parish judge.

Order of the judge.

The above petition and documents and evidence annexed being examined and considered, and the law and the evidence being in favor of the plaintiffs, it is ordered that an order of seizure and sale issue as prayed for in said petition.

Done and signed this 3d day of April, A. D. 1841.

(Signed,) B. G. TENNY,
Judge 9th district.

Filed, April 12th, 1841.

(Signed,) E. CAVELIER,
Dy. clerk.

Sheriff's return.

Received on the 16th day of April, 1841, and served on the 26th day of the same month, by leaving certified copy of the petition, mortgage, acceptance of mortgage, and district judge's orders, with Nelson F. Shelton, a free white person above the age of 14 years, at and living at the domicil of Saml. Anderson, parish of Madison, La., April 30th, A. D. 1841. Service and mileage by water 7 50.

(Signed) G. W. TARKINGTON,
Deputy sheriff.

Writ of seizure.

NELSON F. SHELTON and ROBERT ANDERSON
vs.
SAMUEL ANDERSON. } No.

STATE OF LOUISIANA, *parish of Madison, 9th district court:*

The State of Louisiana and said court to the sheriff of the parish of Madison, greeting:

By virtue of an order of seizure and sale granted by the honorable the judge of the ninth judicial district court of the State of Louisiana, and dated April 3d, 1841, you are commanded to seize and sell, according to law, the following described property, to wit:

First. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, and being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres more, or less.

2d. The following negro slaves for life, now on said plantation: Anderson, aged about thirty-six years, Julia Ann, his wife, aged about twenty-six years, Betsy, William and Everett, their children, all under ten years of age; Sandy, aged thirty, Lethia, his wife, aged twenty-eight, and their children Malinda, twelve years, Julia, Hutchinson and Any, under ten years of age; George, thirty-four years of age, Rhoda, his wife, aged thirty-five, and their child Amy, aged thirteen years; Handy, aged forty years, and his wife, Eliza, aged thirty years, and their children, John, aged seventeen years Nancy, aged thirteen years, Milly, Squire, Peter, Celia and Henry, under ten years of age; Jesse, aged twenty-eight; Fountain, aged forty; Sally, aged thirty; Ned, aged forty; Jordon, aged thirty-six; Howden, aged twenty-five years; Elijah, aged twenty-three years; Charles, aged fifteen years; Dick, aged twenty-four years; Billy, aged twenty-two years; Bob, aged about thirty-six years; Abby, aged about forty years; Katy, aged about forty-five years; Joe, aged about twenty-eight years; Louisa, aged about eighteen *eighteen* years and child Robert, an infant; Susan, eighteen years; Matilda, aged nineteen; Sarah, aged twenty; Jackson,

aged twenty years; Harrison, aged twenty-one years; Paris, aged thirteen years; Jane Johnson, aged eighteen years; Jane Miller, twenty-two years, her child Rachel, an infant; and *Waton*, aged about twenty-five years. All of which property and slaves is specially mortgaged to Nelson F. Shelton and Robert Anderson, plaintiffs herein, to pay and satisfy to said plaintiffs as follows, to wit: to Nelson F. Shelton, the sum of forty-five thousand five hundred and fifty dollars, and to Robert Anderson the sum of nine thousand dollars; making in all fifty-four thousand, five hundred and fifty dollars; together with all costs, interest, &c., which have or may accrue on said sums of money, and seventeen dollars and 12½ cents costs, as well as your own costs and charges. And how you have executed this writ, you make return to the said court in seventy, days as the law directs.

Witness the honorable B. G. Tenney, judge of said court, this 6th day of May, 1841.

(Signed,) JOHN T. MASON, *Clk.*
By E. CAVELIER, *Depy. Clk.*

T. B. Scott, sheriff, to N. F. Shelton and Robert Anderson.

STATE OF LOUISIANA, *parish of Madison:*

Be it known and remembered that I, Thomas B. Scott, sheriff of the parish of Madison, State of Louisiana, by virtue of a writ of seizure and sale, to me directed, against the lands and tenements, goods and property of Samuel Anderson, in the suit of Nelson F. Shelton and Robert Anderson vs. Samuel Anderson, No. 402, ninth district court, parish of Madison, and State of Louisiana, did seize all the right, title, and interest of the said defendant, Samuel Anderson, in and to the following described property, to wit: a certain tract of land, situated on the Mississippi river, in the parish of Madison, about five miles above the city of Vicksburg, and being the same tract that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, and being section No. nine, of township No. sixteen, of range No. fifteen east, containing six hundred and forty acres, more or less; together with the following named and described negro slaves, viz: Anderson, aged about 36 years, Julia Ann, his wife, aged 26 years, Betsey, William, and Everett, their children, all under 10 years of age; Sandy, aged 30 years, Lethea, his wife, aged 28 years, and their children, Malinda, aged 12, and Julia, Hutchinson, and Amy, under ten years of age; George, 34 years; Rhoda, his wife, 34 years, and their child Arcy, aged 13 years; Henry, aged 40 years, and his wife, Eliza, 30 years, and their children, viz: John, aged 17 years, Milly, Squire, Peter, Celia, and Henry, under 10 years of age; Jesse, 28 years; Fountain, 40 years; Sally, 30 years; Ned, 40 years; Jordan, 36 years; Elijah, 23 years; Charles, aged 15 years; Dick, 24 years; Bob, 36 years; Abby, 40 years; Katy, 45 years; Joe, 28 years; Louisa, 18 years, and her child Robert, an

infant; Matilda, 19 years; Sarah, 20 years; Jackson, 20 years; Harrison, 21 years; Paris, 13 years; Jane Johnson, 18 years; Jane Miller, aged 22 years, and Rachel, her infant child; and Overton, aged about 25 years; and after having advertised and published the sale of said property for the space of thirty clear days, by posting up and publishing, according to law, advertisements and notices of said sale, I, the said sheriff, did, on the fourteenth day of June, A. D. eighteen hundred and forty-one, on the premises, offered at public auction to the highest bidder, after having read the advertisements and the certificate of mortgages obtained from the parish judge, for cash, all the right, title, and interest of the said Samuel Anderson in and to the before described property, and Nelson F. Shelton, sen'r, and Robert Anderson, the plaintiffs herein, being present, bid for said property the sum of thirty-six thousand dollars, which being the highest bid or offer made, and being over and above two-thirds of the cash valuation of the same, the said property was adjudicated to Nelson F. Shelton, sen'r, and Robert Anderson, at and for the said sum of thirty-six thousand ($36,000) dollars, subject to all the privileges and mortgages encumbering the same; wherefore, in virtue of the premises herein set forth, and of the law in such case made and provided, and for and in consideration of the price above described, I, Thomas B. Scott, sheriff as aforesaid, do sell, transfer, and convey unto the said Nelson F. Shelton, sen'r, and Robert Anderson in proportion to the claim of each plaintiff in said writ of seizure, all the right, title, and interest of the said defendant, Samuel Anderson, in and to the before described, and all the appurtenances thereunto belonging unto them, the said Nelson F. Shelton, sen'r, and Robert Anderson, and their heirs or assigns forever.

In testimony whereof, I have hereunto set my hand at the parish of Madison, State of Louisiana, on this the sixteenth day of June, eighteen hundred and forty-one, in the presence of Alexander T. Steele and Edmond Cavelier, competent witnesses, who have signed with me the said sheriff.

(Signed,) THO. B. SCOTT,
Sheriff of the parish of Madison, Louisiana.

Attest:

ALEX'R T. STEELE,
E. CAVELIER.

Recorded on this 10th day of July, A. D. 1841.
Attest: E. CAVELIER, *Deputy clerk.*

STATE OF LOUISIANA,
Parish of Madison, ninth judicial district court:

I do hereby certify the foregoing to be a true and correct copy from the records of this office, in which Nelson F. Shelton and Robert Anderson are plaintiffs, and Samuel Anderson is defendant.

Witness my signature and impress of the seal of said court, this 26th day of May, A. D. 1842.

(Signed,) JOHN T. MASON,
Clerk of said court.
By J. W. CAVELIER, *Dept'y clk.*

Transcript.

STATE OF LOUISIANA, *parish of Madison:*

Pleas had before the honorable the ninth district court in and for the parish and State aforesaid. Be it remembered and known that on the 23d day of November, one thousand eight hundred and thirty-nine, Lilbourne P. Perry, by his attorney, filed his petition in words and figures as follows, to wit:

To the honorable Frederick H. Davis, judge of the ninth judicial district of the State of Louisiana, holding sessions of the district court in and for the parish of Madison.

The petition of Lilbourne P. Perry, residing in St. Louis, in the State of Missouri, respectfully represents that Samuel Anderson, residing in the parish of Madison aforesaid, is justly indebted to your petitioner in the sum of thirty-nine thousand nine hundred and ninety-nine dollars ($39,999) due and payable as hereafter stated, for this, to wit: That on the first day of March, one thousand eight hundred and thirty-nine, the said Samuel Anderson executed and signed his three several obligations or notes, each of said notes being for the sum of thirteen thousand three hundred and thirty-three dollars, and payable to Lilbourne P. Perry, your petitioner, one on or before the first day of January, A. D. 1842; one on or before the first day of January, A. D. 1843; and the third and last due and payable on or before the first of January, A. D. 1844; said obligations being for value received for land and negroes purchased of Clayton Tiffin and the said Lilbourne P. Perry; all which will fully appear by reference to said obligations, which are annexed and made part of this petition; and which said obligations were then and there delivered to your petitioner, who is their legal owner. That on the ninth day of July, A. D. 1839, the said Samuel Anderson, by authentic act passed before Richard Charles Downes, parish judge and ex officio notary public in and for the parish of Madison aforesaid, for the purpose of more effectually securing the payment of the aforesaid three obligations when they should become due and payable, did specially mortgage and hypothecate unto and in favor of your petitioner, the following described property, lands and slaves, viz: 1st. A plantation situated in the parish of Madison, and fronting and lying on the Mississippi river about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty

acres, more or less; and was acquired by the mortgager from the said Lilbourne P. Perry and Clayton Tiffin, by act passed before said judge and notary on the 10th April, A. D. 1838; and secondly, the following negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, July Ann, his wife, twenty-six, Betsey, William, and Everett, their children, all aged under ten years; Sandy, thirty, Letha, his wife, twenty-eight, and their children, Melinda, twelve, Julia, Hutchinson, and Amy, under ten years; George, thirty-four, Rhoda, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordon, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, four, *four*; Katy, 45; Joe, forty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Parish, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years. The said mortgager in said act binding himself not to alianate, mortgage, or *encounter* said mortgaged premises to the prejudice of your petitioner; which said act of mortgage was duly accepted by John M. Perry, the agent of your petitioner, and immediately thereafter duly recorded by the said parish judge and recorder of mortgages; all which will fully appear by reference to a duly certified copy of said act of mortgages annexed to and made part of this petition. Shews that in virtue of the premises aforesaid, the said Anderson is justly and really indebted to your petitioner in the amount hereinbefore stated. Your petitioner shews that he verily believes that said Anderson is about leaving permanently the State of Louisiana, and will, unless restrained by the conservative process of this court, remove his property out of the State before the aforesaid debt or any part thereof becomes due, and that thereby your petitioner will lose the security for the payment of his said debt.

Wherefore petitioner prays that a writ of attachment may issue, that the same be levied upon the before mentioned hypothecated plantation, and the crops of the present year made thereon, gathered or ungathered, the negroes hypothecated as aforesaid, and their increase; and that the same be taken into the custody of the sheriff of this parish, there to await the further order of this court; and for general relief in the premises, &c., that he recover the costs of this proceeding.

(Signed,) MARTIN RICHARDSON & STACY,
Attorneys for petitioners.

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Copy of notes.

$13,333 00. On or before the first day of January, 1842, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for lands and negroes purchased of Clayton Tiffin and Lilbourne P. Perry; for the true payment of which we bind ourselves, our heirs, &c., finally by these presents.

Given under our hands and seals, this the first of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICHARD CHAS. DOWNES,
P. Judge of parish Madison, Louisiana.

Second note.

$13,333 00. On or before the first day of January, 1843, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for lands and negroes purchased of Clayton Tiffin and Lilbourne P. Perry; for the true payment of which we bind ourselves, our heirs, &c., finally by these presents.

Given under our hands and seals, this the first day of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICHARD CHAS. DOWNES,
Parish of Madison, Louisiana.

Third note.

$13,333 00. On or before the first day of January, 1844, we promise to pay Lilbourne P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for lands and negroes purchased of Clayton Tiffin and Lilbourne P. Perry; for the payment of which we bind ourselves, our heirs, &c., finally by these presents.

Given under our hands and seals, this the first day of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICHARD CHAS. DOWNES, [SEAL.]
Parish of Madison, Louisiana.

Receipt.

Received from John T. Mason, clerk, the original aforegoing notes, December 3rd, 1842.

Signed, S. ANDERSON.

Certificate.

STATE OF LOUISIANA,
Parish of Madison, ninth district court:

I do hereby certify the foregoing to be true copies of the original notes on file in suit No. 216, styled L. P. Perry vs. Samuel Anderson, in my office.

Witness my signature and impress of the seal of said court, this [L. s.] 3rd day of December, A. D. 1842.

(Signed) J. W. COUCH,
Dep'ty clerk of said court.

(Endorsed.) 216, ninth district court, L. P. Perry vs. Samuel Anderson—copy of notes.

Mortgage.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered, that on this ninth day of July, A. D. eighteen hundred and thirty-nine, before me, Richard Charles Downes, parish judge, and ex officio notary public in and for said State and parish, in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a resident of Hinds county, in the State of Mississippi, who said and declared that, whereas he stands justly indebted to Lilbourne P. Perry, of the city of St. Louis, State of Missouri, in the full sum of forty thousand dollars, and, in order to secure the payment of the same, he has made and executed his three several promissory notes for the sum of thirteen thousand three hundred and thirty-three dollars each; all of which notes are dated the 1st day of March, 1839, and payable to Lilbourne P. Perry, the first of which is payable on or before the first day of January, A. D. 1842, the 2nd on or before the first day of January, A. D. 1843, and the third on or before the first day of January, 1844; all which notes, after being pariphed by me, judge, to identify them herewith, were delivered to John M. Perry, a duly authorized agent for said Lilbourne P. Perry, who hereby acknowledges the receipt thereof.

Now, in order to secure the full and punctual payment of each and all the said notes, he, the said Samuel Anderson, does hereby specially mortgage and hypothecate, in favor of the said Lilbourne P. Perry, and in favor of whomsoever may become the legal holder and owner of any of the said notes, all the following described property, lands and slaves, viz: 1st. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans Territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager by purchase from the said Lilbourne P. Perry and Clayton Tiffin, by act passed before me, judge, on the tenth day of April, A. D. 1838.

2nd. The following mentioned negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, July Ann his wife, twenty-six, Betsey, William, and Everett, their children, all aged under ten years; Sandy, thirty, Letha his wife, twenty-eight, and their children, Malinda, twelve, Julia, Hutchinson, and Amy, under ten years; George, thirty-four, Rhody his wife, thirty-four, and Ary their daughter, thirteen; Harry, forty, Eliza his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jorden, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Parish, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years. The said mortgager binding himself not to sell, alienate, mortgage, or incumber the said mortgaged lands and slaves to the prejudice of this mortgage, I, the said judge, being ex-officio recorder of mortgages for this parish, certify that there does not exist of record, in my office, any mortgage whatever upon the above described property in the name of Samuel Anderson; and the said John M. Perry declared that he hereby accepts this mortgage for Lilbourne P. Perry, with all its provisions. Done and passed on the day and date first above written, in the parish of Madison aforesaid, in presence of Nelson F. Shelton, jr., and Ambrose Cramer, competent witnesses, who sign with the parties and me, judge.

(Original signed) SAMUEL ANDERSON,
JOHN M. PERRY,
NELSON F. SHELTON, Jr.
AMBROSE CRAMER,
RICH'D CHAS. DOWNES,
Parish judge.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing is a true copy of the original act on file, and recorded in my office in record of conventional mortagages, &c., book A, pages 27 and 28. And I further certify, that the mortgage therein set forth, is the first of record in my office against the property therein described, in the name of the mortgager Samuel Anderson.

In faith whereof, I grant these presents under my signature, and the impress of my official seal, this 17th day of July, A. D. 1839.

(Signed) RICHARD CHARLES DOWNES,
Parish judge.

(Endorsed.) Filed 23rd Nov., 1839.

JOHN T. MASON, *Clerk.*

Samuel Anderson, mortgager, to L. P. Perry, July 9th, A. D. 1839.

Affidavit.

John M. Perry, being duly sworn, deposes and says, that he is the agent and attorney of Lilbourne P. Perry, the plaintiff in the foregoing petition, who is now absent from the State of Louisiana; that the defendant, Samuel Anderson, is justly indebted to said plaintiff, Lilbourne P. Perry, in the sum of thirty-nine thousand nine hundred and ninety-nine dollars, due and payable as set forth in said petition; that, to the best of *ther* knowledge and belief of this deponent, the said Anderson is about leaving permanently the State of Louisiana, without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against him previous to his departure; and that said debtor, Anderson, is about to remove his property out of the State of Louisiana before the aforesaid debt, or any part thereof, becomes due; and that all the facts and allegations contained in the foregoing petition are true and correct.

(Signed) JOHN M. PERRY,
Agent for L. P. Perry.

Sworn to and signed in open court, before me, this 23d November, 1839.

(Signed) JOHN T. MASON, *Clerk.*

Order.

LILBOURNE P. PERRY, vs. SAMUEL ANDERSON. } 9th district court, parish of Madison.

The plaintiffs, Lilbourne P. Perry, having come withe the requisites of the law, it is therefore ordered that a writ of attachment issue, and that it be executed as prayed for in the within petition.

Signed, FRED. H. DAVIS,
Nov. 23rd, 1839. *Judge 9 dist.*

(Endorsed.) 216, 9th district court, parish of Madison, Lilbourne P. Perry vs. Samuel Anderson, filed 23rd November, 1839.

JOHN T. MASON, *Clerk.*
By G. W. TARKINGTER,
Deputy clerk.

Attachment bond.

STATE OF LOUISIANA,
Parish of Madison, ninth district court:

Know all men by these presents that we, Lilbourne P. Perry, as principal, and Thomas W. Watts and Henry Lewis, sureties, residing in the parish of Madison aforesaid, are held and firmly bound unto Samuel Anderson of said parish, his heirs, executors, and ad-

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ministrators, in the just and full sum of sixty-five thousand dollars, good and lawful money of the United States, well and truly to be paid; for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, finally by these presents, this 22nd day of November, in the year of our Lord one thousand eight hundred and thirty-nine.

The conditions of the above obligation is such, that whereas the above bounden Lilbourne P. Perry is about to obtain from the ninth district court aforesaid, a writ of attachment against the property of the said Samuel Anderson, in order to secure to the said Perry the payment of thirty-nine thousand nine hundred and ninety-nine dollars, owing to said Perry by said Anderson, and payable as set out in the petition of said Perry, to be filed in said court.

Now, if the said Lilbourne P. Perry shall well and truly pay, or cause to be paid, to the said Samuel Anderson, his heirs, executors, and administrators, all such damages as said Anderson may recover against said Perry in case it shall be decided that said attachment shall have been wrongfully obtained, then this obligation to be null and void, otherwise to remain in full force and virtue.

L. P. PERRY, *his attorney in fact,*
JOHN M. PERRY,
THOMAS W. WATTS,
H. LEWIS.

Signed in my presence, the 22nd November, A. D. 1839.
JOHN T. MASON, *Clerk.*

(Endorsed.) 216, Lilbourne P. Perry vs. Samuel Anderson. Attachment bond, filed 23rd November, 1839.
JOHN T. MASON, *Clerk.*

And on the 26th day of November, 1839, the following citation was issued from this office:

STATE OF LOUISIANA,
Ninth judicial district court, parish of Madison:

LILBOURNE P. PERRY,
vs.
SAMUEL ANDERSON.

To Samuel Anderson, residing in the parish of Madison.

You are hereby summoned [and] cited either to comply with the demand contained in the petition of the said Lelbourne P. Perry, of which a copy accompanies this citation, or to deliver your answer to the said petition, at the office of the clerk of said court, held in the town of Richmond, in said parish, within twelve days after service hereof.

Witness the honorable Fred. H. Davis, judge of said court.

Signed, sealed, and delivered this 26th day of Nov., 1839.
JOHN T. MASON,
Clerk of said court.
[SEAL.] By G. W. TARKINGTON,
Deputy clerk.

(Endorsed.)—Citation to Samuel Anderson, filed 21st Dec., 1839.
JOHN T. MASON, *Clerk.*

Received on the 27th of November, A. D. and served on the 28th of same month and year, by handing a certified to copy of this citation, and of the petition, to the defendant Samuel Anderson, in person, at the court house in Richmond, in the parish of Madison. Service $2 50.
(Signed) T. B. SCOTT, *Sheriff.*

And on the 27th Nov., 1839, the following attachment was issued from this office.

Attachment.

LILBOURNE P. PERRY
vs. } No. 216.
SAMUEL ANDERSON.

NINTH DISTRICT COURT, *parish of Madison:*

The State of Louisana and said court to the sheriff of the parish of Madison, greeting:

Whereas due proff has been made before the district court aforesaid, by the plaintiffs in the above entitled suit, that Samuel Anderson, the defendant in said suit, is indebted to said plaintiff in the sum of thirty-nine thousand nine hundred and ninety-nine dollars, which sum, or any part of it, is not yet due; and that the said defendant is about to remove his property out of the State of Louisiana, before said debt or any part becomes due, and to remove personally from said State. Now, therefore, you are commanded, in the name of the State of Louisiana and of said court, to seize, attach, according to law, and take into your possession the following property, situate in said parish, belonging to said Samuel Anderson, a resident of said parish, to wit:

1st. A plantation situated in this parish of Madison, and fronting and lying on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by said Anderson from the said Lilbourne P. Perry and Clayton Tiffin, by act passed before said judge and notary, on the 10th April, A. D. 1838. And secondly, the following negroe slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, Julia Ann, his wife, twenty-six, Betsy, Wil-

liam, and Everett, their children, all aged under ten years; Sandy, thirty, Letha, his wife, twenty-eight, and their children, Matilda, twelve, Julia, Hutchinson, and Amy, under ten years; George, thirty-four, Rhoda, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jorden, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, *four*; Katy, 45; Joe, forty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Parish, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years; and also the increase of said slaves—also the crops of the present year made on said plantation, both gathered and ungathered. And how you shall have executed this writ, make due return thereof according to law.

Witness the honorable Fred. H. Davis, judge of the ninth judicial district court, this 27th day of Nov., A. D. 1939.

(Signed) JOHN T. MASON, *Clerk.*

[SEAL.] By G. W. TARKINGTON, *Deputy clerk.*

Instructions.

LILBOURNE P. PERRY vs. SAMUEL ANDERSON. } 9th district court.—An attachment.

I, John M. Perry, acting as agent for Lilbourne P. Perry, plaintiff in above entitled suit, hereby direct Thos. B. Scott, of the parish of Madison, to return the writ of attachment now in his hands, in the suit of Lilbourne P. Perry *vs.* Samuel Anderson, No. 216, on the docket of said district court, for the parish of Madison, to the clerk's office of said court, without making any seizure or service on said writ of attachment; and I furthermore hereby direct said sheriff and clerk, that all proceedings had, or to be had, under said attachment, be dismissed and discontinued.

(Signed) JOHN M. PERRY,
Agent for L. P. Perry, Clayton Tiffin, J. H. Martin, Geo. W. Grove.

Received on the 27th Nov., A. D. 1839, and served on the 28th of same month and year, by handing a certified copy of this writ of attachment to the defendant Samuel Anderson, in person, at the court house in Richmond, and then was instruct[ed by] the plaintiff in this case not to levy the attachment, but to return it to the clerk's office, as will be seen by reference to the within order from him. Service $2.

(Signed) T. B. SCOTT, *Sheriff.*

(Endorsed.)—216, 9th district court, parish of Madison, Lilbourne P. Perry *vs.* Samuel Anderson, attachment filed 21st Dec'r, 1839.
JOHN T. MASON, *Clerk.*

And on the 17th day of November, 1840, the following was entered on the minutes of the court.

LILBOURNE P. PERRY
vs.
SAMUEL ANDERSON.

In this case the defendant having failed to appear, either in person or by his advocate, after the delay provided by law, judgment by default is rendered against him.

And on the 18th day of November, 1840, the following answer was filed:

LILBOURNE P. PERRY
vs.
SAMUEL ANDERSON.

The defendant came into court, and for answer to plaintiff's petition in this suit filed, denies all and singular the allegations therein contained and set forth. And for further answer thereto he says, that the notes mentioned and appended to plaintiff's petition, were executed and delivered to the petitioner, as set forth therein; also that the mortgage set forth, was executed as set forth, and for the purposes as shewn in said mortgage.

This defendant for further [answer] sets forth, that on the day of November, A. D. 1839, John N. Donohue, deputy United States marshal, in virtue of a writ of fieri facias, then in his hands, which issued from the circuit court of the United States, for the ninth circuit, in the eastern district of Louisiana, at the suit of Mosely and Bouldin against John M. Perry and Lilbourne P. Perry, seized upon the several promissory notes mentioned in, and appended to, plaintiff's petition, and the mortgage securing the same; and afterwards, to wit, on the 4th day of January, A. D. 1840, proceeded to sell the said notes and mortgage, in satisfaction of the said fieri facias of Mosely and Bouldin *vs.* John M. Perry and Lilbourne P. Perry, when this defendant became the purchaser of said notes and mortgage, at the last and highest bid. All of which will more fully appear by the annexed copy of said marshal's sale, which is herewith filed, and made part of this answer.

This defendant further shews, that at the time of the seizure of the said notes and mortgage, they were due and payable to Lilbourne P. Perry only, and were his property at the time of said seizure by the deputy marshal as aforesaid. And defendant further shews, that the endorsement made on the back of one of the notes due on the first of January, 1842, was not made at the date thereof, to wit, on the 22d of October, 1839, but was made after the said seizure so made by the marshal as aforesaid; and said assignment

was only dated for the purpose of evading said seizure. All of which this defendant will be prepared to show on the trial of this suit.

This defendant therefore shews and alleges, that by virtue of the purchase made by him at the marshal's aforesaid, the said debt, mentioned and shown by said note sued on, and the mortgage securing, have been discharged and extinguished by confusion, and by this defendant's becoming the owner of the said debt and mortgage.

Defendant therefore prays that plaintiff's demand be rejected, and that the notes sued on and mortgage may be decreed to be discharged and extinguished by the confusion created by said sale, as before set forth.

(Signed) JOHN B. BEMISS, *Att'y for defts.*

(Endorsed.)—216, Lilbourne P. Perry *vs.* Samuel Anderson—answer filed 18th Nov., 1840.

JOHN T. MASON, *Clerk.*

Conveyance.

STATE OF LOUISIANA, *parish of Madison:*

Whereas I, John N. Donohue, deputy United States marshal, in and for the eastern district of the State of Louisiana, by virtue of a writ of fieri facias, issued from the circuit court of the United States for the ninth circuit, in and for district and State aforesaid, at the suits of Mosely and Bouldin *vs.* John M. Perry and Lilbourne P. Perry, I did seize a certain debt owing by Samuel Anderson to said Lilbourne P. Perry, as evidenced by three promissory notes, dated 1st March, 1839, due in the years 1842, 1843, and 1844, each for the sum of thirteen thousand three hundred and thirty-three dollars, payable by said Samuel Anderson to the said Lilbourn P. Perry, which notes are paraphed "on the 9th July, 1839, together with the mortgage intended to secure said notes or debts, recorded in the office of the parish judge of the parish of Madison, in the parish and State aforesaid, in the record book of conventional and legal mortgages, pages 27 and 28, where there are fifty slaves and six hundred [and] forty acres of land mortgaged to secure the payment of said notes and mortgage, seized as the property of said Lilbourne P. Perry, and having exposed the same to public sale as aforesaid, on a credit of twelve months, when Samuel Anderson became the purchaser thereof, at the price of five thousand dollars, for which he gave his bond, with John B. Bemiss and Aaron Lilly as his securities, payable in twelve months after the date thereof, all in due form of law, and which bond I hereby acknowledge to have received.

Now, therefore, know all men by these presents, that the said deputy as aforesaid do, in consideration of the premises, and by virtue of the act in such cases made and provided, *do* grant, bargain,

sell, assign, and set over to the said Samuel Anderson, his heirs and assigns, all the right, title, and interest, or demand, which the said Lilbourne P. Perry had, in or to the said debt, notes, and mortgage, as before described, on the twenty-third day of November, A. D. 1839, or at any time since, or to any part thereof; to hold the same, to the said Samuel Anderson, his heirs and assigns forever, hereby subrogating (as far as my act in the premises can) said Samuel to all the rights which the said Lilbourne P. Perry had or has, in, under, and too the aforesaid mortgage; and the said Samuel Anderson being present, hereby accepts this conveyance, and hereby specially mortgages the above described debt and mortgage to secure the final payment of the purchase money, and all interests and costs that may accrue in the premises. Done and passed in the State and parish aforesaid, in presence of John B. Bemiss and Aaron Lilly, competent witnesses, who have signed with me, said deputy U. S. marshal, and said Samuel Anderson, this 4th day of January, 1840.

(Original signed) JOHN N. DONOHUE,
U. S. marshal.

Accepted, SAMUEL ANDERSON.
JOHN B. BEMISS,
AARON LILLY.

As an indemnity to John B. Bemiss and Aaron Lilly, my securities on the twelve months' bond referred to in this act, I hereby transfer and assign the same to the joint order of the said John B. Bemiss and Aaron Lilly; this assignment to be void upon the said Samuel Anderson paying the bond given in this case, January 4th, 1840.

(Original signed) SAMUEL ANDERSON.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing is a true copy of the original act on file and of record in my office, on the 27th day of January, A. D. 184 .

[SEAL.] Witness my signature and official seal.
(Signed) R. C. DOWNES, *Parish judge.*

STATE OF LOUISIANA, *parish of Madison:*

Be it known and remembered, that on the tenth day of April, eighteen hundred and thirty-eight, before me, Richard Charles Downes, parish judge and ex-officio notary public in and for the parish of Madison aforesaid, duly commissioned and sworn, personally came and appeared Clayton Tiffin, of the city of St. Louis, State of Missouri, and Lilbourne P. Perry of, and residing in, this parish, who each said and declared, that for and in consideration of the sum of seventy-five thousand dollars, to them in cash paid, by Samuel Anderson, of Warren county, State of Mississippi, before

signing this act, the receipt whereof they do hereby acknowledge, they, the said Clayton Tiffin and Lilbourne P. Perry, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm, unto the said Samuel Anderson, the whole of that certain tract or parcel of land situate, lying and being in the parish of Madison aforesaid, on the Mississippi river, about five miles above Vicksburg, it being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, of range fifteen east, and containing six hundred and forty-four acres, be the same more or less, and being the same tract of land which the said Lilbourne P. Perry lately occupied and cultivated as a cotton plantation: to have and to hold the said described tract of land, with all the improvements and advantages thereto belonging to, or in anywise appertaining, unto the said Samuel Anderson, and his heirs and assigns, free from the lawful claims of all persons whomsoever. And the said appearers further declared, that they do hereby sell and convey, with a guarantee of the title to the same, all the following named slaves unto the said Samuel Anderson, namely: Anderson, July Ann, and their two children, Betsy and William; Sandy, Letha, and their three children, Melinda, Julia and Hutchinson; George, Rhody, and their daughter Ary; Harry, Eliza, and their children, John, Nancy, Milly, Squire, Peter, and Celia; Jesse, Fountain, Sally, Ned, Jordan, Howden, Elijah, Anna, Francis, Charles, Dick, Betty, Bob, Darry and Alby. And the said appearers further declared, that they do hereby bind themselves and their heirs, the title, *unto the title*, unto the said lands and slaves, to the said Samuel Anderson, to warrant and forever defend against the lawful claims of all persons whomsoever. And to these presents also appeared at the same time Mrs. Ella T. Perry, wife of the said Clayton Tiffin, and Mrs. Mary Ann Tiffin, wife of the said Lilbourne P. Perry, herein duly authorized by their said husbands, who said, and each of them did, declare, that in becoming a party to this act, they are fully aware of the rights of married women upon the property of their husbands, and in the community of acquits and gains; and that they do hereby approve of this sale, and do hereby renounce in favor of the aforesaid Samuel Anderson all their dotal, paraphernal, and other rights, of whatsoever kind or character, on the said property. And I, the said judge, did then explain to each of the said ladies, to wit, Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin, out of the presence and hearing of their said husbands, the nature of their rights and of this instrument, as follows: That they have a tacit or legal mortgage on all the property of their husbands and upon that of the community. 1st. For the restitution of their dowry and for the replacing of their dotal property brought in marriage, reckoning from the celebration of the marriage. 2nd. For the replacing of dotal property that may have come to them either by

succession or donation, reckoning from the day when the succession was opened or the donation perfected. 3rd. For the replacing the paraphernal property sold by the wife, or for the reimbursement of the price, when the husband has received the same and appropriated it to his own use. And 4th. For the debts which they may have assumed jointly with their husbands, and for their general security when they have had the administration of the wife's paraphernal property. And the said Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin, did each declare, that they do still approve this act, and that they do hereby renounce all their aforesaid rights in favor of the said Samuel Anderson, well knowing that they can never revoke this renunciation, being at this time above the age of twenty-one years. And to these presents also personally appeared the said Samuel Anderson, who declared, that he does hereby accept this sale and conveyance. And the said Samuel Anderson further declared, that he does hereby waive and dispense with the production of a certificate from the office of the recorder of mortgages, and that he does hereby renounce all rights of action that he may have against the undersigned judge for want of the same.

Done and passed in the parish of Madison, this tenth day of April, eighteen hundred and thirty-eight, in presence of George W. Grove and Calvin L. Perry, competent witnesses, who have signed with the said appearers, and we, the said judge.

[SEAL.]

(The original is signed) CLAYTON TIFFIN,
VIRGINIA ELLA TIFFIN,
LILBOURNE P. PERRY,
M. A PERRY,
SAMUEL ANDERSON,
GEO. W. GROVE,
CALVIN L. PERRY.
RICH'D CHAS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered, that on the ninth day of July, A. D. eighteen hundred and thirty-nine, before me, Richard Charles Downes, parish judge and ex officio notary public, in and for said State and parish, in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a resident of Hinds county, in the State of Mississippi, who said and declared that, whereas he stands justly indebted to Lilbourn P. Perry, of the city of St. Louis, State of Missouri, in the full sum of forty thousand dollars, and in order to secure the payment of the same, he has made and executed his three several promissory notes, for the sum of thirteen thousand three hundred and thirty-three dollars each, all which notes are dated the 1st day of March, 1839, and payable to Lilbourn P. Perry, the first of which is payable on or before the

first day of January, A. D. 1842; the second, on or before the first day of January, A. D. 1843; and the third, on or before the first day of January, A. D. 1844; all which notes, after being paraphed by me, judge, to identify them herewith, were delivered to John M. Perry, a duly authorized agent for the said Lilbourn P. Perry, who hereby acknowledges the receipt thereof. Now, in order to secure the full and punctual payment of each and all the said notes, he, the said Samuel Anderson, does hereby specially mortgage and hypothecate, in favour of the said Lilbourn P. Perry, and in favour of whomsoever may become the legal holder and owner of any of the said notes, all the following described property, lands and slaves, viz:

1st. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager by purchase from the said Lilbourne P. Perry and Clayton Tiffin, by act passed before me, judge, on the tenth day of April, A. D. 1838.

2nd. The following mentioned negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, July-ann his wife, twenty six, Betsy, William, and Everett, their children, all aged under ten years; Sandy, thirty, Letha his wife, twenty-eight, and their children, Malinda twelve, Julia, Hutchinson and Amy, under ten years; George, thirty-four, Rhoda, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia and Harry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordon, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; [Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two,] her child Rachel, an infant; and Overton, aged about twenty-five years.

The said mortgager hereby binding himself not to sell, alienate, mortgage, or incumber the said mortgaged land and slaves to the prejudice of this mortgage, I, the said judge, being ex officio recorder of mortgages for this parish, certify, that there does not exist of record in my office any mortgage whatever upon the above described property in the name of Samuel Anderson; and the said John M. Perry declared that he hereby accepts this mortgage for Lilbourn P. Perry, with all its provisions.

Done and passed on the day and date first above written, in the parish of Madison aforesaid, in presence of Nelson F. Shelton, jr., and Ambrose Cramer, competent witnesses, who sign with the parties and me, judge.

Signed, SAMUEL ANDERSON,
JOHN M. PERRY,
NELSON F. SHELTON, Jr.
AMBROSE CRAMER,
RICHARD CHAS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered that, on the ninth day of July, A. D. eighteen hundred and thirty-nine, before me, Richard Charles Downes, parish judge and ex officio notary public, in and for said State and parish, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a resident of Hinds county, in the State of Mississippi, who declared that, whereas he stands justly indebted to Nelson F. Shelton, of Goochland county, in the State of Virginia, in the full sum of forty-five thousand five hundred and fifty dollars, and has made and executed his two certain promissory notes, the first for the sum of twenty-two thousand three hundred and fifty dollars, and the second for the sum of twenty-three thousand two hundred dollars, both dated the 1st of January, 1839, and payable to Nelson F. Shelton, the first on the first day of January, A. D. 1845, and the second on the first day of January, A. D. 1846; both which notes, after being paraphed "ne varietur," to indentify them herewith, were delivered to Nelson F. Shelton, junior, a relation of *of* the said Nelson F. Shelton and acting for him, who hereby acknowledges the receipt thereof. Now, therefore, in order to secure the full and punctual payment of the said two notes as they become due and payable, he, the said Samuel Anderson, does hereby specially mortgage and hypothecate, in favor of the said Nelson F. Shelton, and in favor of whomsoever may become the legal holder and owner of said notes, all the following described property, lands and slaves, viz: 1st. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager by purchase from Lilbourne P. Perry and Clayton Tiffin, by act passed before me, judge, on the tenth day of April, A. D. 1838. 2d. The following mentioned negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, July Ann, his wife, twenty-six, Betsy, William, and Everett, their children, all under ten; Sandy, thirty, Letha, his wife, twenty-eight,

and their children, Malinda, twelve, Julia, Hutchinson, and Amy, under ten; George, thirty-four, Rhody, his wife, thirty-four, and Airy, their [daughter,] thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Henry, under ten; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordon, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, and child Rachael, an infant; and Overton, aged about twenty-five years. He, the said mortgager, binding himself not to alienate or incumber the said mortgaged property to the prejudice of this mortgager. It being understood that this mortgage is posterior to that granted by the said Samuel Anderson, in favour of Lilbourn P. Perry, to secure the payment of the sum of forty thousand dollars, by act passed before me, judge, this day. And I, judge as aforesaid, certify that there does not exist of record in my office any mortgage on the above described property in the name of Samuel Anderson, but that above mentioned in favor of Lilbourn P. Perry. And the said Nelson F. Shelton, jun'r, declared that he hereby accepts this mortgage for said Nelson F. Shelton, with all its provisions and claims.

Done and passed in the parish of Madison aforesaid, on the day and date first above written, in presence of Ambrose Cramer and John M. Perry, competent witnesses, who sign with the said appearers and me, judge and notary.

Original signed,

SAM'L ANDERSON,
NELSON F. SHELTON, Jr.
AMBROSE CRAMER,
JOHN M. PERRY,
RICHARD CHS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

Whereas I, John N. Donohue, deputy United States marshal in and for the eastern district of the State of Louisiana, by virtue of a writ of fieri facias, issued from the circuit court of the United States for the ninth circuit, in and for district and State aforesaid, at the suit of Mosely & Bouldin vs. John M. Perry and Lilbourn P. Perry, I did seize a certain debt owing by Samuel Anderson to said Lilbourn P. Perry, as evidenced by three promissory notes, dated 1st of March, 1839, together with the mortgage intended to secure said notes or debts, recorded in the office of the parish judge of the parish of Madison, in the parish and State aforesaid, in the record book of conventional and legal mortgages, pages 27 and 28, where there are fifty slaves and six hundred and forty acres of land, mortgaged to

secure the payment of said notes and mortgage, seized as the property of said Lilbourn P. Perry, and having exposed the same to public sale as aforesaid, on a credit of twelve months, when Samuel Anderson became the purchaser thereof at the price of five thousand dollars, for which he gave his bond, with John B. Bemiss and Aaron Lilly as his securities, payable in twelve months after the date thereof, all in due form of law, and which bond I hereby acknowledge to have received.

Now therefore, know all men by these presents, that I, the said deputy as aforesaid, do, in consideration of the premises, and by virtue of the act in such cases made and provided, *do* grant, bargain, sell, assign, and set over to the said Samuel Anderson, his heirs and assigns, all the right, title, and interest or demand which the said Lilbourn P. Perry had in and to the said debt, notes, and mortgage as before described, on the twenty-third day of November, A. D. 1839, or at any time since, or to any part thereof; to hold the same to the said Samuel Anderson, his heirs and assigns forever, hereby subrogating (as far as my act in the premises can) said Samuel Anderson to all the rights, which the said Lilbourn P. Perry had, or has, in, under, and to the aforesaid mortgage; and the said Samuel Anderson being present, hereby accepts this conveyance, and hereby specially mortgages the above described debt and mortgage to secure the final payment of the purchase money, and all interest and costs that may accrue in the premises. Done and passed in the State and parish aforesaid, in presence of John B. Bemiss and Aaron Lilly, competent witnesses, who have signed with me, said deputy U. S. marshal, and said Samuel Anderson, this 4th day of January, 1840.

(Original signed,) JOHN N. DONOHUE,
Dy. U. S. Marshal.

Accepted,

SAMUEL ANDERSON,
JOHN B. BEMISS,
AARON LILLY.

As an indemnity to John B. Bemiss and Aaron Lilly, my securities on the twelve months' bond referred to in this act, I hereby transfer and assign the same to the joint order of the said John B. Bemiss and Aaron Lilly; this assignment to be void upon the said Samuel Anderson paying the bond given in this case, January 4th, 1840.

(Original signed,) SAM'L ANDERSON.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered that on this seventeenth day of March, in the year of our Lord one thousand eight hundred and forty, before me, Alfred J. Lowry, a notary public in and for the above named parish and State, duly commissioned and sworn, and in presence of the

witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a citizen of the abovenamed parish and State, who declared that, whereas he is justly and truly indebted to Nelson F. Shelton, of Goochland county, in the State of Virginia, in *in* the full and lawful sum of forty-five thousand five hundred and fifty dollars; and he further declares that he is also justly indebted to Robert Anderson, of Kenawha county, State of Virginia, here present and accepting for himself and Nelson F. Shelton, in the full and lawful sum of nine thousand dollars. Now, therefore, in order to secure the full and punctual payment of the abovementioned sums of money, amounting in all to the sum [of] fifty-four thousand five hundred and fifty dollars ($54,550) to the said Nelson F. Shelton and Robert Anderson, within twelve months (12 months) from the date of this act of mortgage, he, the said Samuel Anderson, does hereby especially mortgage and hypothecate, in favor of the said Nelson F. Shelton and Robert Anderson, all the foregoing described property, lands, and slaves to wit: first, a plantation situate in this parish, and lying and fronting on the Mississippi river, about five mile above Vicksburg, and being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by this mortgager, by purchase from Lilbourn P. Perry and Clayton Tiffin, by act passed before Richard Charles Downes, parish judge, on the 10th day of April, A. D. 1838. 2d. The following mentioned negro slaves for life, now on said plantation: Anderson, aged about thirty-six, Julia Ann, his wife, aged about twenty-six, Betsey, William, and Everett, their children, all under ten years of age; Sandy, aged thirty years, Letha, his wife, aged twenty-eight years, and their children, Malinda, twelve years, Julia, Hutchinson, and Amy, under ten years of age; George, thirty-four years of age, Rhoda, his wife, aged thirty-four, and their child Ary, aged thirteen years; Handy, aged forty years, and his wife Eliza, aged thirty years, and their children, John, aged seventeen years, Nancy, aged thirteen years, Milly, Squire, Peter, Celia, and Henry, under ten years of age; Jesse, aged twenty-eight; Fountain, aged forty; Sally, aged thirty; Ned, aged forty; Jordan, aged thirty-six; Howden, aged twenty-five years; Elijah, aged twenty-three years; Charles, aged fifteen year; Dick, aged thirty-four years; Abby, aged about forty years; Katy, aged about forty-five years; Joe, aged about twenty-eight years; Billy, aged twenty-two years; Bob, aged about thirty-six years: Louisa, aged about eighteen years, and child Robert, an infant; Susan, eighteen years; Matilda, aged nineteen; Sarah, aged twenty; Jackson, aged twenty years; Harrison, aged twenty-one years; Paris, aged thirteen years; Jane Johnson, aged eighteen years; Jane Miller, aged twenty-two years, and child Rachel, an infant; and Overton, aged about twenty-five years. He, the

said mortgager binding himself not to alienate or incumber the said mortgaged property to the prejudice of this mortgage; it being understood that there is a mortgage granted by the said Samuel Anderson in favor of Lilbourn P. Perry to secure the payment of the sum of forty thousand dollars, by act passed before R. C. Downes, parish judge, on the 9th day of July, A. D. 1839; and also, it is understood, that on the ninth day of July, A. D. 1839, the said Samuel Anderson granted a mortgage in favor of Nelson F. Shelton to secure the payment of the sum of forty-five thousand five hundred and fifty dollars, which act was passed before Richard C. Downes, parish judge. And this mortgage is now granted in the stead and place of the above named mortgage. The parties waive the production of a certificate of non-mortgage on the above named land and negroes, and release me, notary, from any responsibility on account of said certificate not being produced. Thus done and passed the day and year first above written, in presence of T. B. Scott and John B. Bemiss, witnesses hereunto required, and residing in this parish, who have signed these presents, together with the parties and me, notary, after due reading hereof.

(Original signed) SAML. ANDERSON,
ROBT. ANDERSON,
ROBT. ANDERSON,
For Nelson F. Shelton.

Teste—

T. B. SCOTT,
JOHN B. BEMISS,
A. J. LOWRY, *Notary public.*

STATE OF LOUISIANA, *parish of Madison:*

I, Richard Charles Downes, parish judge and ex-officio recorder of mortgages in and for said parish, do hereby certify that the foregoing twelve pages, contain true and correct copies of certain original acts and documents now on file and of record in my office.

Witness my signature, and the impress of my seal, this 4th day [SEAL.] of August, A. D. 1840.

(Signed) RICHARD CHARLES DOWNES,
Parish judge.

(Endorsed.)—216; Perry vs. Anderson; answer filed, 18 Nov., 1840.

JOHN T. MASON, *Clk.*

Circuit court of the United States, ninth judicial circuit, eastern district of Louisiana.

Be it remembered that [on] the eleventh day of January, in the year of our Lord one thousand eight hundred and thirty-nine, Mosely and Bouldin came into court by R. C. Stockton, esq., their attorney, and filed the following petition, to wit:

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & L. P. PERRY.

United States of America, ninth judicial circuit court of the United States, for the eastern district of Louisiana, February term, 1839.

To the honorable the judges of the ninth judicial circuit court of the United States, holding sessions of said court at the city of New Orleans, in and for the eastern district of Louisiana, the petition of Hillery Mosely, who is a citizen of the State of Virginia, residing in the county of Charlotte, the said Bouldin suing and acting herein for the use and benefit of the said Hillery Mosely, most respectfully shews:

That John M. Perry and Lilbourn P. Perry, who are citizens of the State of Louisiana, residing in the parish of Madison in said State, and in the eastern district of Louisiana, are justly and legally, jointly and severally, indebted to your petitioners, in solido, in the sum of seven thousand five hundred and sixty dollars, with interest on the same at the rate of eight per centum per annum, from the 31st of December, 1838, for this, to wit: on the twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-eight, the said John M. Perry, by the name and signature of John M. Perry; the said Lilbourn P. Perry, by the name and signature of L. P. Perry; John F. Brodnox, by the name and signature of John F. Brodnox; Robert H. Brodnox, by the name and signature of R. H. Brodnox; and Hugh R. Austin, by the name and signature of H. R. Austin, made their certain writing obligatory, and delivered the same to your petitioners, whereby they, and each of them, promised and bound themselves, in solido, and each of them, to pay to your petitioner or order, on or before the twenty-eight day of December, in the year of our Lord one thousand eight hundred and thirty-eight, the sum of seven thousand five hundred and sixty dollars; by reason of all which your petitioners alledge the said John M. Perry, Lilbourn P. Perry, Robert H. Brodnox, John F. Brodnox, and Hugh R. Austin, became jointly and severally liable and bound, in solido, to pay to your petitioners the said sum of seven thousand five hundred and sixty dollars, with interest as aforesaid; all which will more fully appear by reference to said writing obligatory, which is hereto annexed, and prayed to be taken as a part of this petition.

Your petitioner shows further, that although often amicably requested so to do, yet the said John M. Perry and Lilbourn P. Perry have hitherto wholly failed and refused to pay to your petitioners the said sum of money, or any part thereof; and your petitioners allege further that said John M. Perry and Lilbourn P. Perry are on the eve of leaving the State forever, without leaving in it sufficient property to satisfy said *or* judgment, and without there being a pos-

sibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against them before their departure. In consideration of all the premises, your petitioners pray that the said John M. Perry and Lilbourn P. Perry may be cited to appear and answer to this petition, and after due proceedings had, that they may be jointly and severally adjudged and condemned, in solido, to pay to your petitioners the said sum of seven thousand five [hundred] and sixty dollars, with interest on the same as aforesaid, and costs of suit. Your petitioner prays further, that in consideration of the premises, and of the affidavit written at the foot of petition, a writ of attachment may issue in the premises, and the property of the said John M. Perry and Lilbourn P. Perry, and of each of them, may be attached and be held by the marshal, for the better security of the satisfaction of the demand of your petitioners, till the further order of this honorable court. Your petitioners pray for all such general and further relief as the nature and justice of their case will allow; and as in duty, &c.

(Signed) STOCKTON, PEYTON & PIERCE,
Counsel and attorneys for petitioner.

Hillery Mosely, one of the plaintiffs in the above suit, makes oath that, *that* John M. Perry and Lilbourn P. Perry, the defendants in said suit, are jointly and severally, justly and legally, indebted, in solido, to this affiant, and to William W. Bouldin, who are the plaintiffs in said suit, in the sum of seven thousand five hundred and sixty dollars, together with interest, as stated in the within petition; that all the material allegations of the foregoing petition are true, and that said John M. Perry and Lilbourn P. Perry are on the eve of leaving this State forever, without leaving in it sufficient property to discharge the said claims or judgment, and that he does not make this affidavit with the intention of vexing said John M. Perry and Lilbourne P. Perry, but only in order to secure his demand.

Signed, HILLERY MOSELY.

Sworn to and subscribed before me, [at] New Orleans, 11th January, 1839.

Signed, J. Q. A. HOIT, *D'y clerk.*

Order.

Let an attachment issue as prayed for, *in* plaintiffs giving bond, with security, in the sum of twelve thousand dollars, conditioned according to law.

Signed, P. K. LAWRENCE, *U. S. judge.*

Filed, July 11, 1839.

(Signed,) J. Q. A. HOIT, *Dy. clerk.*

Note annexed.

$7,560. On or before the 28th day of December, one thousand eight hundred and thirty-eight, we, or either of us, promise and bind ourselves and heirs to pay Hillery Mosely and William W. Bouldin, or order, the just sum of seven thousand five hundred and sixty dollars, without offset, either in law or equity, for value received. Signed and seal[ed] this, the 22d day of January, 1838.

(Signed) JOHN M. PERRY, [SEAL.]
L. P. PERRY, [SEAL.]
JOHN F. BRODNOX, [SEAL.]
R. H. BRODNOX, [SEAL.]
H. R. AUSTIN. [SEAL.]

VICKSBURG, *Warren county*, *Mississippi.*

Docket entry.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

January 12, 1843, the court met according to adjournment. On motion of Peyton & T. N. Pierce, esqrs., of counsel for the plaintiffs, it is ordered that the plaintiffs be allowed to withdraw the attachment bond filed in this case.

Motion.

MOSELY & BOULDIN,
vs.
JNO. M. PERRY & LILBOURN P. PERRY.

Circuit court of the 9th judicial circuit of the United States, in and for the eastern district of Louisiana.

On motion of Peyton & T. N. Pierce, counsel for the plaintiffs, it is ordered that the plaintiffs be allowed to withdraw the attachment bond filed in this case.

(Signed) JNO. WINTHROP, *Clerk.*

Filed January 12, 1839.

Receipt for the bonds.

Received of John Winthrop, clerk of the United States court, the bond filed in the case of Mosely & Bouldin vs. John M. Perry and L. P. Perry for $12,000, as security for the writ of attachment prayed for.

(Signed) HILLERY MOSELY.

NEW ORLEANS, *January 12th*, 1839.

Documents.

MOSELY & BOULDIN,
vs.
J. M. PERRY & L. P. PERRY.

Circuit court U. S. 9th circuit, eastern district of Louisiana.

We are security for the costs accruing, or that have accrued, in the case of Mosely & Bouldin vs. J. M. Perry & L. P. Perry.

(Signed) PEYTON, YERGER & PIERCE.

NEW ORLEANS, *January 12th*, 1841.

Supplemental petition.

MOSELY & BOULDIN,
vs.
JNO. M. PERRY & L. P. PERRY.

To the honorable the judge of the circuit court of the 9th judicial circuit of the United States, in and for the eastern district of Louisiana.

The supplemental petition of Hillery Mosely and William W. Bouldin, citizens of the State of Virginia, to the petition formerly filed in this court in the above entitled, the leave of the court being first had and obtained for the filing the same, respectfully shows, in addition *addition* to what is stated in the original petition, that Jno. M. Perry and Lilbourn P. Perry are about to leave the State, without leaving in it sufficient property to satisfy these petitioners' claim; wherefore petitioners pray, that in consideration of the affidavit filed in this case, that said John M. Perry and Lilburn P. Perry be arrested and held to bail, and that, after due proceedings had, be condemned, in solido, to pay petitioners the sum of seven thousand five hundred and sixty dollars, and interest and costs as prayed for in the original petition, and for general relief.

(Signed) STOCKTON, PEYTON & T. N. PIERCE.

Order.

Let the defendants be held to bail in the sum of *eleven* [thousand] three hundred and forty dollars.

(Signed) P. K. LAWRENCE, *U. S. judge.*

Filed January 12, 1839.

(Signed) JOHN WINTHROP, *Clerk.*

Citation.

Circuit court of the United States, 9th circuit, for the eastern district of Louisiana.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBURN P. PERRY.

To John M. Perry, residing in the parish of Madison, State of Louisiana.

You are hereby summoned to comply with the prayer of the an-

nexed petition, or file your answer thereto, in writing, in the office of the clerk of the circuit court of the United States, ninth circuit, and eastern district of Louisiana, in the city of New Orleans, within ten days from service hereof, or judgment will be given against you by default.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Or-
[L. S.] leans, this 12th day of January, 1839, and 63rd year of the independence of the United States.

(Signed) J. Q. A. HOIT, *D'y clerk.*

A further delay of one day for every ten miles the place of service is distant from that where the court is held, is allowed by law.

Marshal's return.

Served copy of petition, and other documents thereto annexed, and a copy of the within citation, on John M. Perry, in person, at the parish of Madison, 450 miles from New Orleans; returned February 23rd, 1839.

(Signed) J. P. WALDEN, *Dy. marshal.*

Citation.

Circuit court of the United States, 9th circuit, for the eastern district of Louisiana.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURN P. PERRY.

To Lilbourn P. Perry, residing in the parish of Madison, State of Louisiana.

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the circuit court of the United States, 9th circuit, and eastern district of Louisiana, in the city of New Orleans, within ten days from the service hereof, or judgment will be given against you by default.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of January, 1839, and 63rd year of the independence of the United States.

(Signed) J. Q. A. HOIT, *Dy. clerk.*

A further delay of one day for every ten miles the place of service is distant from that *of* the court is held, is allowed by law.

Marshal's return.

Defendant L. P. Perry could not be found, after diligent search and enquiry. Returned February 23rd, 1839.

(Signed) J. P. WALDEN, *Dy. marshal.*

Bail writ.

UNITED STATES OF AMERICA:

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURNE P. PERRY.

Circuit court of the United States, 9th circuit, for the eastern district of Louisiana.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are *you are* hereby commanded, in the name of the United States, for the 9th circuit and eastern district of Louisiana, to arrest the bodies of the defendants, John M. Perry and Lilbourn P. Perry, and them confine, till they shall give security that they shall not depart from said State without the leave of our said court, in the sum of eleven thousand three hundred and forty dollars.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twelfth day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and in the 63rd year of the independence of the United States.

[SEAL.]

(Signed) J. Q. A. HOIT, *Dy. clerk.*

Marshal's return.

Received 12th January, 1839, and on the 18th same month arrested and took defendant John M. Perry into my custody, from whence he was released by giving bond, with Z. H. Rawlings, Chas. Johnson, and H. Lewis, as sureties, in the parish of Madison, 450 miles from New Orleans, in the eastern district of Louisiana; which bail bond is herewith returned. And Lilbourn P. Perry could not be found, after diligent search and enquiry; and executed this writ in all other things as the law directs. Returned February 23rd, 1839.

(Signed) J. H. HOLLAND, *Marshal.*

Bond.

Know all men by these presents that we, John M. Perry, as princip*le*, Z. H. Rawlings, Charles Johnson, and H. Lewis, are held and firmly bound with John Henry Holland, marshal of the United States for the eastern district of Louisiana, in the sum of eleven thousand three hundred and forty dollars, lawful money of the United States; for the payment whereof, to the said John Henry Holland, his executors, heirs, administrators, and assigns, we jointly and severally bind ourselves, our respective heirs, executors, and administrators and assigns, firmly by these presents; as witness our respective names hereunto signed and affixed in the parish of Madison, State of Louisiana, in the said eastern district of Louisiana, this 18th day of January, in the year of our Lord one thousand eight hundred and thirty-nine.

1506.

The condition of the above obligation is such, that if the said John M. Perry, now in custody of the said marshal under a certain order of arrest *arrest*, or bail issued from the honorable the circuit court of the United States for the said eastern district of Louisiana, in the ninth circuit, in a certain suit entitled Mosely & Bouldin vs. John M. Perry and Lilbourn P. Perry, but has been released from custody at the time, by reason of the execution and delivery of these presents, shall not depart the State of Louisiana without the leave of the court; or in case he the said John M. Perry should depart the said State of Louisiana without such leave, if the above bounden Z. H. Rawlings, Chas. Johnson, and H. Lewis, shall pay to the said marshal the amount for which definitive judgment shall be rendered in the before mentioned cause, then the foregoing obligation shall be void, but otherwise shall be and remain in full force.

(Signed) JOHN M. PERRY, [SEAL.]
ZACH'Y H. RAWLINGS, [SEAL.]
CHARLES JOHNSON, [SEAL.]
H. LEWIS. [SEAL.]

Signed, sealed, and delivered, in presence of—
Signed, L. C. BARM.

Answer.

HELERY MOSELY & WILLIAM W. BOULDIN, plffs.
vs.
JOHN M. PERRY & LILBOURN P. PERRY, defend'ts.

Circuit court of the United States for the eastern district of Louisiana.

The defendants, for answer, deny all and singular the allegations of the plaintiffs, as set forth by them in their petition.

The defendants, for further answer, say that the plaintiffs are indebted [to] them in the sum of twenty-six hundred dollars, for which they pray for judgment in reconvention for this, to wit, that the said plaintiffs sold to them a lot of negroes for the sum of seven thousand five hundred and sixty dollars, that one of the said negroes, a negro man aged about — years, named was diseased at the time *at the time* of the sale, which was unknown to defendants, which disease was of long standing, and of which he has since died. That the said negro man was estimated and valued at fourteen hundred dollars, which has proved a total loss to defendants, and that the rest of the negroes in said lot were diseased and unsound, and for which defendants have sustained a further loss of twelve hundred dollars, making in all the said sum of twenty-six hundred dollars, as aforesaid. The defendants for further answer pray, that William W. Bouldin, one of the plaintiffs, may be required to answer on oath the following interrogatories:

1st. Did you sell a lot of negroes to plaintiff, as joint partner with Hilery Mosely? If yea, state whether you did not know that

one of the negroe men in said lot, valued and estimated at fourteen hundred dollars, was diseased at the time of sale.

2nd. Did you, or not, know that the said negro man had been sick for a long period of time previous to the sale?

3d. Did you, or not, know that the residue of the said lot of negroes were diseased at the time of sale?

(Signed) B. A. CRAWFORD,
Att'y for def'ts.

Endorsed—Filed Feb'y 20th, 1839.
(Signed) HOIT, *D'y clerk.*

Rule.

Wednesday, February 21st, 1839. The court met according to adjournment.

MOSELY & BOULDIN,
vs.
JOHN M. PERRY & LILBOURN P. PERRY.

On motion of B. Crawford, of counsel for defendants, ordered, that the plaintiffs shew cause on Saturday next, at 10 o'clock, A. M., why the bail in this case should not be set aside on the grounds filed.

Motion.

MOSELY & BOULDIN, plaintiffs,
vs.
JOHN M. PERRY & LILBOURN P. PERRY.

Circuit Court of United States, for the eastern district of Louisiana.

On motion of the defendants, by their attorney, it is ordered that the plaintiffs shew cause, on Saturday next, why the bail in this case should not be set aside, on the grounds, 1st. Of the insufficiency of the affidavit. 2d. That the said affidavit is not in conformity to law. 3d. That the amended petition or affidavit of the plaintiffs alledging that the plaintiffs, John M. Perry and Lilbourn P. Perry, are about to leave the State, without leaving in it sufficient property to satisfy these petitioners' claim, is not sworn to.

(Signed) B. A. CRAWFORD, *Att'y for def'ts.*

Endorsed—Filed Feb'y 21, 1839.
(Signed) JOHN WINTHROP, *Clerk.*

Marshal's return on the copy of the above rule.

Rec. Feb'y 21, 1839, and on the same day served a copy of the rule on Balie Peyton, esqr., in person, and a copy of the within on T. N. Pierce, esqr., in person. Ret. Feb'y 21, 1839.

(Signed) J. H. HOLLAND, *Marshal.*

Amended answer.

MOSELY & BOULDIN, vs. JOHN M. PERRY, &c. } Circuit Court United States, for the eastern district of Louisiana.

The amended answer of the defendants (the leave of the court first had and obtained) for answer says, that the bond or note upon which this suit is brought, was given for a lot of negroes sold by the plaintiffs to the defendant, John M. Perry, and charges that, one of the negro men of said lot, named , aged about — years, was diseased at the time of sale, of long standing, which was unknown to the defendants, but known to the plaintiffs, of which said disease the said negro man has since died, and that he was estimated and valued at fourteen hundred dollars, which *which* has proved a total loss to the defendants; and also charges that the rest of the negroes in said lot were diseased, and unsound, and incapacitated for ordinary business, which was unknown to the defendant, John M. Perry, at the time of sale, but known to the plaintiffs; from which the defendants have sustained a further loss of twelve hundred dollars, making in all the sum of twenty six hundred dollars, for which he is in justice and equity [entitled] to a credit on said note or bond. The said defendants pray for a trial by jury.

(Signed, *signed*) B. A. CRAWFORD, *Att'y for def'ts.*

Endorsed—Filed by leave of court, April 5, 1839.

(Signed) JNO. WINTHROP, *Clerk.*

MOSELY & BOULDIN, vs. PERRY, &c. } Order for commission *commission* to take depositions in the State of Mississippi.

(Signed) B. A. CRAWFORD, *Att'y for def'ts.*

Endorsed—Filed April 5th, 1839.

(Signed) JNO. WINTHROP, *Clerk.*

Notice of trial.

Circuit court of the United States, ninth judicial circuit, eastern district of Louisiana.

MOSELY & BOULDIN, vs. J. M. PERRY & L. P. PERRY, }

At the request of Balie Peyton, esq'r, of counsel for the plaintiffs, this cause is fixed for trial for Tuesday, the 18th day of June, 1839, as per order of court, entered of record on the eighth day of June, 1839.

Witness my hand, and the seal of the said court, at the city of [SEAL] New Orleans, this fifteenth day of June, 1839.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Rec'd June 15th, 1839, served same day on B. A. Crawford, esqr., att'y, by leaving a copy of the same at his office.

(Signed) L. C. BACON, *Dep. Marshal.*

Verdict of the jury.

NEW ORLEANS, 18*th June*, 1839.

We, the jury, find a verdict for the plaintiffs, for the sum of seven thousand five hundred and sixty dollars.

(Signed) LOUIS J. FORNIQUET, *Foreman.*

Judgment.

Tuesday, 18th June, 1839. Present, Hon. P. K. Lawrence, district judge; Hon. John McKinley, presiding judge, absent.

MOSELY & BOULDIN, vs. JOHN M. PERRY & LILBOURN P. PERRY. } No.

This case *case* came on this day for trial, Thomas N. Pierce appearing for the plaintiffs; and thereupon came a jury, to wit: Wm. Florence, Henry Ward, Wm. Hall, J. H. Dudley, J. Solomon, L. J. Forniquet, Thos. Walsh, Jean Cowlen, S. L. St. Cyr, Thomas Hearsay, Theodore Guyol and Giles Babcock, who were duly sworn to try the issue joined between the parties, and a true verdict give, accordingly to the evidence; who, after having heard the evidence and argument of counsel, and the charge of the court, from their seats rendered the following verdict, which was ordered to be recorded, and is in the words and figures following, to wit:

NEW ORLEANS, 18*th June*, 1839.

We, the jury, find a verdict for the plaintiffs for the sum of seven thousand five hundred and sixty dollars.

(Signed) LOUIS J. FORNIQUET, *Foreman.*

Whereupon it is ordered by the court, that final judgment be entered up, in conformity with said verdict, in favor of the plaintiffs, Mosely and Bouldin, and against the defendants, John M. Perry and Lilbourn P. Perry, jointly and severally, for the sum of seven thousand five hundred and sixty dollars, with interest of five per centum per annum, from the eleventh January, eighteen hundred and thirty-nine, till paid, and costs of suit.

Judgment signed 25th June, 1839.

Signed P. K. LAWRENCE, *U. S. Judge.*

Fi. fa.

Circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from John M. Perry and Lilbourn P. Perry, jointly and severally, the sum of seven thousand five hundred and sixty dollars, with interest of five per centum per annum, from the eleventh January, eighteen hundred and thirty-nine, till paid, and costs of suit hereon taxed, to wit:

Clerk's fees now due - - - - - $25 83¼
Winthrop's "
Marshal's fees up to July 9th, 1839 - - - 62 50

Cash which Mosely and Bouldin lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana, and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said John M. Perry and Lilbourn P. Perry, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said John M. Perry and Lilbourn P. Perry, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said John M. Perry and Lilbourn P. Perry, in your district, whereof they were owners on the 18th day of June, 1839, into whose hands soever the same may have come. And that you have the money before our said court, to render to the said Mosely and Bouldin, for the judgment aforesaid, on the fourtieth day from date hereof, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this 9th day of July, A. D. [L. s.] 1839, and 64th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received Wednesday, the 24th day of July, 1839, and demanded payment *payment* at the residence of the within named defendants, John M. Perry and Lilbourn P. Perry, to satisfy the within execution, which was refused or neglected. I then made diligent search or enquiry for property to satisfy the within fi. fa., but I could not find any property belonging to the within named defendants, John M. Perry and Lilbourn P. Perry, nor was there any shown to me, or pointed out by the plaintiffs or defendants; I therefore return this writ, in no part satisfied, Friday, 18th day of August, 1839. Parish of Madison, La., 499 miles from New Orleans.

(Signed) J. N. DONOHUE,
Deputy U. S. marshal.

Order for alias fi. fa.

VICKSBURG, 20*th Sept.*, 1839.

JOHN WINTHROP, esq'r,
C. U. S. C. court, New Orleans.

DEAR SIR: In the matter of "Mosely & Bouldin vs. John M. Perry and Lilbourn P. Perry," in which judgment was rendered at last term of the court in favor of plaintiffs, a writ of fieri facias was issued, and the deputy marshal made return "that no property could be found." He tells me that he was ignorant as to the attorney of the plaintiffs, and therefore he did not call on me. I can show property amply sufficient to pay four or five times the amount of our demand; you will please to issue without delay an alias fieri facias in the above mentioned case, and put it into the hands of the marshal, whom you will please to allow to read this letter. I am, dear sir, yours, &c.

Signed, R. C. STOCKTON,
Attorney for petitioners.

Alias fieri facias.

Circuit court of the United States for the 9th circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful *lawful* deputy, greeting:

You are hereby commanded, as you have heretofore been commanded, that you demand from John M. Perry and Lilbourn P. Perry, jointly and severally, the sum of seven thousand five hundred and sixty dollars, with interest at five per cent. per annum from the eleventh day of January, eighteen hundred and thirty-nine, till paid, and costs of suit hereon taxed, to wit: Clerk's fees now due, $30 83¼, Winthrop's, marshal's—cash, which Mosely and Bouldin lately recovered by judgment of the circuit court of the United States for the 9th circuit and eastern district of Louisiana; and if they shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said John M. Perry and Lilbourn P. Perry, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said John M. Perry and Lilbourn P. Perry, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said John M. Perry and Lilbourn P. Perry in your district, whereof they were owners on the 18th day of June, 1839, into whose hands soever the same may have come, and that you have those moneys before our said court to render to the said Mosely and Bouldin for the judgment aforesaid on third Monday of December next, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United [States,] this 5th day of October, A. D. 1839, and 64 years of the independence of the United States.

(Signed,) A. PIERSE, *Deputy clerk.*
For D. N. HENNEN, *Clerk.*

Marshal's return.

Received 5th October, 1839.

(Signed,) J. P. WALDEN, *D'y marshal.*

Received 23d day of October, 1839, and on the same day made demand of the *of the* amount of the within fi. fa. at the residence of the within named defendants John M. Perry and Lilbourn P. Perry, which was refused. I seized, on the 23rd day of November, 1839, a debt due by Samuel Anderson to the within named Lilbourn P. Perry for forty thousand dollars, there *was* three notes given by said Anderson to said Perry, and mortgage on fifty slaves and six hundred and forty acres of land, to secure the payment of said debt, to satisfy this fi. fa.; and after advertising the said claim ten entire days from the last day of the notice of seizure, and having appraisers appointed according to law, who appraised said property to be worth twenty-eight thousand dollars cash valuation, on the 10th day of December, 1839, and then on the same day I offered the property for cash for sale, and after repeatedly crying it, there was no sale for want of a bid to the amount required by law; and then I readvertised the same property, and sold the same on the 4th day of January, 1840, on a credit of twelve months, when Samuel Anderson became the purchaser thereof for the sum of five thousand dollars, he being the highest and last bidder, for which he gave his bond, with John B. Bemiss and Aaron Lilly as surety, which bond I received, and the said bond is herewith returned; four hundred and thirty miles from New Orleans.

Signed, M. MARIGNY, *U. S. Marshal.*
By JOHN N. DONOHUE, *Dep'y U. S. Marshal.*

Capias ad satisfaciendum.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

We command you that you take the bodies of John M. Perry and Lilbourn P. Perry, if they shall be found in your district, and that you safely keep them so that you have their bodies before the circuit court of the United States of America, ninth judicial circuit and eastern district of Louisiana, to be held at the city of New Orleans, in the said district, on the first Monday of April, 1840, to satisfy Mosely and Bouldin of the sum of seven thousand five hundred and sixty dollars, less the sum of five thousand dollars *dollars*, received on the 4th day of January, 1840, on a writ of fi. fa. issued 5 Octo-

ber, 1839, together with interest of five per cent. per annum, from 11th day of January, 1839, till paid, and costs of suit hereon taxed —cash, which the said Mosely and Bouldin lately recovered by judgment of the said circuit court of the United States of America, for the eastern district of Louisiana. And have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 16th [SEAL.] of January, in the year of our Lord one thousand eight hundred and forty, and of the independence of the said United States of America the 64 year.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Costs—Clerk, (D. N. H.) - - - - $35 83¼
J. Winthrop's costs, late clerk, - - 47 83

Marshal's return.

Received, Thursday the 16 January, 1840, and after diligent search and enquiry the within named defendants, John M. Perry and Lilbourn P. Perry, could not be found in the eastern district of Louisiana, distance five hundred miles from New Orleans.

(Signed) M. MARIGNY, *U. S. Marshal.*
By JOHN N. DONOHUE, *Dep'y U. S. Marshal.*

Receipt on back of petition.

Received, this 5th January, 1841, the 12 month bond due 1—4 January, 1841, for $5,000, signed by Samuel Anderson, John B. Bemiss, and A. Lilly.

Signed, M. MARIGNY, *U. S. M.*

Clerk's office, circuit court of the United States, ninth circuit, eastern district of Louisiana:

I do hereby certify, the foregoing seventeen pages to be a true and correct transcript of all the proceedings, process, pleadings, documents, *documents*, and other matters on file and of record in a certain cause wherein Mosely and Bouldin are plaintiffs, and John M. Perry and Lilbourn P. Perry are defendants, No. 290, of the docket of said court.

In witness whereof I have hereunto signed and affixed the seal of said court at the city of New Orleans, this twenty-fifth day [SEAL.] of January, in the year of our Lord one thousand eight hundred and forty-one, and 65 year of the independence of the United States of America.

DUNCAN N. HENNEN, *Clerk.*
By FRANCIS A. FOYGNET, *Dep'y clerk.*

Endorsed—216, circuit court U. S. No. 390, Mosely and Bouldin vs. John M. Perry and Lilbourn P. Perry. Transcript costs 40 00 fos. a 33¼, 13 66⅔, seal and costs 2 00, $15 66⅔, &c.

Notice of seizure to S. Anderson.

Mr. Anderson will please take notice, that by virtue of a writ of fieri facias, issued from the circuit court of the United States for the 9th circuit, in and for the eastern district of Louisiana, I have levied on a certain mortgage given by you to Lilbourn P. Perry, dated the 9th July, A. D. 1839, as recorded in the office of the parish judge of the parish of Madison, La., to secure the payment of three promissory notes given by you in favor of said Perry, dated 1st March, A. D. 1839, and payable in the years A. D. eighteen hundred and forty-two, eighteen hundred and forty-three, and eighteen hundred and forty-four; you are hereby notified not to pay said notes to said Perry, or any other person, as I shall sell the above mortgage to satisfy the above fi. fa. on the 10th day of December next, at the door of the court house in the parish of Madison, La. The above described notes are for thirteen thousand three hundred and thirty-three dollars each; this 23d day of November, A. D. 1839, parish of Madison, Louisiana.

(Signed) JOHN N. DONOHE,
Deputy U. S. marshal.

12 *month's bond.*

STATE OF LOUISIANA, *parish of Madison:*

Twelve months after date, we, Samuel Anderson, as princip*le*, and John B. Bemiss and Aaron Lilly, as securities, promise to pay Mosely and Bouldin, or order, the sum of five thousand dollars, for value received, with five per cent. interest per annum from the date hereof till paid; and for the faithful and punctual payment of which sum of money, and the interest that may accrue thereon, we hereby jointly, severally, and in *solido*, firmly bind ourselves, our heirs, executors, and administrators. Dated and signed this fourth day of January, eighteen hundred and forty.

The condition of the above obligation is such, that whereas the above bounden Samuel Anderson has this day become the purchaser, as the highest and last bidder, of a certain mortgage, given by Samuel Anderson to Lilbourn P. Perry, recorded in the office of the parish judge of the parish of Madison, in the record book of conventional and legal mortgages, in pages 27 and 28, for the price of five thousand dollars, which was seized by the deputy marshal, in and for the eastern district of Louisiana, by virtue of a writ of fieri facias which issued from the U. S. circuit court in and for the eastern district of Louisiana, at the suit of Mosely and Bouldin *vs.* John M. Perry and Lilbourn P. Perry, No. 390, and which was advertised as the law directs, and offered for sale at the door of the court house of the parish of Madison, for cash, on the tenth day of December, eighteen hundred and thirty-nine, but which would not bring two-thirds of the appraisement thereof; wherefore, after advertising the said mortgage to be sold on a credit of twelve months,

at the court house door of said parish, on this day, being the fourth day of January, 1840, and at said offer, the said Samuel Anderson became the purchaser thereof for the aforesaid sum of five thousand dollars, as the highest and last bidder. Now, if the said Samuel Anderson, or his said security, shall pay the aforesaid sum of five thousand dollars, and all the interest that may accrue thereon, at the time stipulated, that is, twelve months after the date hereof, being the fourth day of January, eighteen hundred and forty, then this obligation shall be null and void, else to be in full force and virtue, as the laws of Louisiana direct in such cases.

This done in the parish of Madison, State of Louisiana, in the year of our Lord one thousand eight hundred and forty, and in presence of James L. Crandell and Jacob C. Seale, witnesses residing in said parish.

(Signed) SAMUEL ANDERSON,
JOHN B. BEMISS,
AARON LILLY.

Witnesses: J. L. CRANDELL,
J. C. SEALE.

And on the 18th of May, 1841, the following was entered on the minutes of the court.

LILBOURN P. PERRY
vs. } No. 216.
SAMUEL ANDERSON.

Set for Thursday, the 20th instant.

Motion.

L. P. PERRY
vs.
SAMUEL ANDERSON.

Plaintiff, by his undersigned counsel, moves that this suit be dismissed at his costs.

(Signed) MARTIN, RICHARDSON & STACY,
Attorneys.

(Endorsed.)—216, L. P. Perry *vs.* S. Anderson—motion filed 20th May, 1841.

JOHN T. MASON, *Clerk.*

And on the 20th of May, 1841, the following was entered on the minutes of the court.

LILBOURN P. PERRY,
vs.
SAMUEL ANDERSON.

Motion filed by plaintiff's counsel to dismiss this suit at plaintiff's costs.

Ordered, that the motion to dismiss be sustained, and that this suit be dismissed at plaintiff's cost, by consent of the parties. It is

also ordered, that the three notes on file in said suit be not withdrawn therefrom by either party, unless upon an order of this court, previously and contradictorily rendered with the other party, after due notice to him; and defendant has leave to withdraw documents marked A, by leaving a certified copy with the clerk.

Motion.

LILBOURN P. PERRY vs. SAMUEL ANDERSON. } 216.

The defendant herein moves this honorable court for a rule on plaintiff, to shew cause why the notes sued on in above entitled suit should not be given up to him upon his leaving a certified copy of said notes, they being the property of said defendant, &c.

BEMISS & PIERCE,
Att'ys for defendants.

(Endorsed.)—No. 216, Lilbourn P. Perry *vs.* Sam'l Anderson.—Motion to withdraw notes filed 11th May, 1842.

JOHN T. MASON, *Clerk.*

Judgment.

By reason of the law and the evidence in this case, and by reason of a motion of plaintiff's counsel thereto, it is ordered, adjudged and decreed, that judgment be rendered as if non suit in this case, and that the notes herein filed be not withdrawn until leave [be] obtained; and that the plaintiffs pay the costs of suit to be taxed. Read and signed in open court, this 3d day of June, A. D. 1841.

B. G. TENNY, *Judge 9th dist.*

And on the 11th of May, 1842, the following was entered on the minutes of the court:

LILBOURN P. PERRY vs. SAMUEL ANDERSON. }

Motion to withdraw notes filed, and it is ordered by the court that L. P. Perry, the plaintiff in this suit, shew cause on Thursday, the 19th instant, why the application should not be granted.

Answer.

LILBOURN P. PERRY vs. SAMUEL ANDERSON. } Ninth district court, parish of Madison.

The plaintiff Lilbourne P. Perry, for cause against the rule taken upon him by Samuel Anderson, why the notes sued on should not be withdrawn and delivered up to said Anderson, shews, that the plaintiff has taken a voluntary non suit in the above cause, after issue joined, which issue has never been either tried or decided;

but that plaintiff now stands on the record as the owner of said notes, and he denies that said Anderson can have an order of this court for the delivery to him of said notes until it shall have been decided in a suit, regularly brought for that purpose; that said Anderson is the owner of said notes, which issue he denies can be tried upon the said defendant's rule to shew cause; wherefore, and for other reasons equally apparent, he prays that defendant may be discharged at his costs.

D. S. STACY, *Att'y for plff.*

(Endorsed.)—216, Lilburne P. Perry *vs.* 216, Sam'l Anderson.—Answer to rule filed May 16th, 1842.

J. W. COUCH, *Dep. clk.*

And on the 16th of May, 1842, the following was entered on the minutes of the court:

LILBOURN P. PERRY
vs.
SAMUEL ANDERSON.

Answer to rule taken to shew cause filed by plaintiff's counsel.

And on the 19th of May, 1842, the following was entered on the minutes of the court:

LILBOURN P. PERRY
vs.
SAMUEL ANDERSON.

Affidavit of John M. Perry filed.

Bill of exceptions.

LILBOURN P. PERRY
vs.
SAMUEL ANDERSON. } 216.—Ninth dist. court, parish of Madison.

Be it remembered, that after the court had overruled the exceptions on file to the rule to shew cause why the notes filed in this suit should not be delivered up to the defendants, the counsel of the plaintiff moved that the suit be continued, and made a shewing for said continuance by the affidavit of John M. Perry, agent of the plaintiff, on file, which motion the court overruled, refused the continuance, and ordered trial of the rule to proceed; to which opinion of the court plaintiff's counsel excepted, declined to make any further appearance, and tender this bill of exception for signing. Signed in open court, this 20th day of May, 1842.

THOS. CURRY,
Dist. judge, ninth judicial district.

(Endorsed.)—Bill of exceptions filed May 19th, 1842.

J. W. COUCH, *Dep. clk.*

Affidavit.

L. P. PERRY vs. S. ANDERSON. } 216.

Ninth district court of the State of Louisiana, for the parish of Madison.

John M. Perry being required to state on oath facts which he expects to prove by the witness Crawford, mentioned in his affidavit of this date, read and filed, swears, that he expects to prove by said Crawford, [that] he, Crawford, in a certain suit lately pending in the ninth circuit court of the United States for the eastern district of Louisiana, wherein Moseley and Boulding are and were plaintiffs, and affiant and Lilbourn P. Perry, were and are defendants, he, Crawford, put in an answer by mistake for the said Lilbourne P. Perry, and that he, said Crawford, never had any authority from the said Lilbourn P. Perry, or from any duly authorized attorney or agent of said Lilbourn P. Perry, to put in said answer, or to make any answer or plea of any description whatever, or in any manner whatever to represent said Lilbourn P. Perry in said suit; and he swears further, that said Crawford has himself told affiant that he never was employed by said Lilburn P. Perry in any manner whatever, to represent the said Lilbourn P. Perry in said suit.

JOHN M. PERRY.

Filed May 19th, 1842.

J. W. COUCH, *Dep. clk.*

Sworn to and subscribed in open court, this 19th day of May, A. D. 1842. J. W. COUCH, *Dep. clerk.*

Affidavit.

L. P. PERRY vs. S. ANDERSON. } 216.

Ninth district court of the State of Louisiana, for the parish of Madison.

John M. Perry, agent and attorney in fact of the plaintiff in the above entitled suit, makes oath, that he is the agent of Lilbourn P. Perry, the said plantiff; that said Lilbourn P. Perry is absent at this time from the State of Louisiana, and he, said Lilbourn P. Perry, resides in the State of Missouri, and has resided in said State of Missouri for several years past; that Lilburn P. Perry has not been within the vicinity of the State of Louisiana for nearly or quite two years past, and that ever since the said Lilbourn P. Perry left the State of Louisiana, which affiant believes was in the fall of the year 1838, and became a resident in the State of Missouri, affiant has been, as he is now, the agent and attorney in fact of the said Lilbourn P. Perry.

Affiant swears, that not until Wednesday, the 18th day of May, in the year 1842, was affiant apprised that any such motion as that now before the court, made on the part of Samuel Anderson, had been made, nor *too* affiant any knowledge that any such motion was intended to be made on the part of said Anderson, or any one claiming under him.

Affiant swears further, that Bennet A. Crawford, who resides in the city of New Orleans, is a witness whose testimony is material for the substantiation of the claims of the said Lilbourn P. Perry on the trial of said motion; that the said Lilbourn P. Perry cannot go safely to trial without the evidence of said Crawford, and that he expects to prove by said Crawford such facts as will show the said Anderson has no title in and to said notes.

Affiant swears also, that since he was informed of the existence of said motion, he has not had time to procure the testimony of said Crawford, and that he cannot procure said testimony of said Crawford in time to go to trial at the present *time* of this court, but he, affiant, expects to procure said testimony of said Crawford so as to go to trial at the next term of this honorable court; and finally, that this affidavit is not taken for the purpose of delay, but only to obtain substantial justice.

JOHN M. PERRY.

Sworn to and subscribed in open court, this 19th day of May, A. D. 1842.

(Endorsed.)—216; Affidavit of J. M. Perry, filed May 19th, 1842.

J. W. COUCH, *Dep. clerk.*

Evidence.

L. P. PERRY
vs.
SAMUEL ANDERSON.

Defendants offer the transcript marked A, and recorded as evidence.

Thomas R. Patton sworn, says, he believes the signature to the notice of seizure to be Mr. Donnahoo's genuine signature, and that he believes the writing in the body of the notice to be that of Mr. Donnahoo's, and that he was acting as deputy United States marshal for the eastern district of the State of Louisiana, about that time.

Document marked B. Mr. Crandell and Mr. Seale sworn, says, they recognize their signatures to the document marked C, as signing witnesses, and recognized the signatures of Samuel Anderson, J. B. Bemiss, and Aaron Lilly signed to the said bond, and know of its execution. Defendants offer a copy of the original act of sale from the marshal of the State of Louisiana to Samuel Anderson, marked D, founded on pages 89 and 10, of the transcript marked A); offer 3 notes signed *signed* Samuel Anderson, marked E, F, and

G, as evidence and received. Defendants offer the whole record contained in suit No. 216, inclusive, (defendants on the records, but plffs. in this motion.) Evidence here closed on both sides.

STATE OF LOUISIANA,

Parish of Madison, ninth district court:

I do hereby certify the above to be all the evidence offered and recorded in the above styled suit.

Witness my signature this 19th day [of] May, 1842.

J. W. COUCH, *Dep. clk.*

Endorsed.—216; L. P. Perry vs. Saml. Anderson; evidence filed, May 19th, 1842.

J. W. COUCH, *Dep. clk.*

And on the 19th of May, 1842, the following was entered on the minutes of the court.

LILBOURN P. PERRY,
vs.
SAMUEL ANDERSON.

In this case the court this day rendered the following judgment on a rule to show cause:

By reason of the law and the evidence being in favor of the defendants, and against the plaintiffs, Lilbourn P. Perry, and the defendant's answer to the plaintiff's petition, and the evidence being considered, and the defendant, Samuel Anderson, having proved to the satisfaction of the court, that he has, since the institution of this suit, become the true and legal owner of the three notes sued on, and the indebtedness set forth in plaintiff's petition, having been extinguished by confusion, it is ordered, adjudged, and decreed, that the defendant, Saml. Anderson, have judgment in his favor, and against the plaintiff, Lilbourn P. Perry, and that Saml. Anderson be decreed to be the true and legal owner of the said three notes, the same being extinguished by confusion, and that the same be adjudged and decreed to be delivered up to the said defendant, Samuel Anderson.

Judgment.

LILBURN P. PERRY,
vs.
SAMUEL ANDERSON. } No. 216.

Ninth district court, parish of Madison:

On a rule to show cause.—By reason of the law and the evidence being in favor of the defendants, and against the plaintiff, Lilburn P. Perry, and the defendant's answer to the plaintiff's petition, and the evidence being considered, and the defendant, Samuel Anderson, having proved to the satisfaction of the court, that

he has, since the institution of this suit, become the true and legal owner of the three notes sued on, and the indebtedness set forth in plaintiff's petition having been extinguished by confusion, it is ordered, adjudged, and decreed that the defendant, Saml. Anderson, have judgment in his favor, and against the plaintiff, Lilbourn P. Perry, and that said Saml. Anderson be decreed to be the true and legal owner of the said three notes, the same being extinguished by confusion, and that the same be adjudged and decreed to be delivered up to said defendant, Samuel Anderson, and that the said L. P. Perry pay the costs of this suit, to be taxed. Done and signed in open court, this 1842.

THOS. CURRY,
District judge, ninth judicial district.

(Endorsed.)—216; judgment filed 20th May, 1842.
JOHN T. MASON, *Clerk.*

Notice of judgment.

LILBOURN P. PERRY
vs. } No. 216.
SAMUEL ANDERSON.

STATE OF LOUISIANA,
Ninth district court, parish of Madison:

To John M. Perry, agent for Lilburn P. Perry, residing in the parish aforesaid.

Take notice that, on the twentieth day of May, 1842, a final judgment was rendered against you in the above entitled cause, in favor of the said Samuel Anderson, by which the three notes filed in the above suit are decreed to be the property of the defendant, Samuel Anderson, and it is also decreed that you pay the costs of suit.

Witness the honorable Thomas Curry, judge of said court, this [L. S.] 24th day of May, A. D. 1842.

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH,
Dep. clerk.

(Endorsed.)—216; Madison dist. court; notice of judgment; original; filed, May 27th, 1842.

J. W. COUCH, *Dep. clerk.*

Rec'd on the 24th day of May, 1842, and served on the 26th day of the same month, by handing a certified copy of this notice of judgment in person to John M. Perry near the ferry at Vicksburg, parish of Madison, La.

Service 62½, mileage 3 50.

L. H. BRYAN, *Dep. Sheriff.*

Petition of appeal.

STATE OF LOUISIANA, *parish of Madison:*

Ninth district court, May term, 1842.

LILBURN P. PERRY
vs.
SAMUEL ANDERSON. } Petition of appeal.

To the honorable the judge of the district court in and for the ninth district, parish of Madison, State of Louisiana.

The petition of Samuel Anderson, who resides in said parish of Madison, defendant in the above entitled suit, respectfully shews, that at the May term of this honorable court, A. D. 1841, a certain final judgment was rendered by this court, allowing the plaintiff in the above entitled suit to dismiss said suit, or take a non-suit, notwithstanding the answer of this defendant; which said judgment, this petitioner alledges, is erroneous and illegal, and calculated to render irreparable injury to this petitioner, whereas petitioner avers that petitioner had no right to dismiss his said suit, that the amount in controversy exceeds three hundred dollars. Petitioner therefore prays *prays* to be allowed to take and prosecute a devolutive appeal from the said judgment, returnable to the next term of the supreme court *at* to be holden at Alexandria; that said Lilbourn P. Perry be duly cited according to law, and that on a final hearing the said judgment in this case be corrected, revised, and reversed by the supreme court; that your honor will fix the amount of security to be given in the premises, and for general relief, &c.

PIERCE, BEMISS & HENDERSON,
For defendant.

(Endorsed.)—No. 216; Lilburn P. Perry vs. Samuel Anderson; petition of appeal filed May 20, 1842.

J. W. COUCH, *Dep. clerk.*

Order.

Let an appeal be granted as prayed for in the above petition, returnable to the next term of the supreme court of the State of Louisiana, to be holden on the 1st Monday in October next, at Alexandria, for the Western district of Louisiana, on petitioners entering into bond and security, conditioned for payment of costs, according to law, in the sum of one hundred dollars.

Signed this 20th day of May, 1842.

THOS. CURRY,
Dist. judge, 9 judicial district.

Appeal bond.

L. P. PERRY
vs.
SAMUEL ANDERSON. } No. 216.—Appeal bond.

Ninth district court, parish of Madison:

Know all men by these presents, that we, Saml. Anderson, [of the] parish of Madison, and C. B. McKiernan, also of the parish of Madison, are held and firmly bound, in solido, unto the said L. P. Perry, of the State of Missouri, in the just and full [sum] of one hundred dollars; for the payment of which, well and truly to be made, to the said L. P. Perry, his heirs, administrators and assigns, we, and each of us, bind ourselves, our heirs, and legal representatives, and each of them. Now, whereas the said Saml. Anderson has this day taken a devolution appeal from a certain judgment rendered in the above case, wherein the said L. P. Perry is plaintiff, and said Saml. Anderson is deft., (allowing the plaintiff, Lilburn P. Perry, to dismiss his suit,) to the honorable the supreme court of Louisiana, that he may have the said judgment revised, corrected, and reversed. Now, the condition of the above obligation is such, that if the said Saml. Anderson, or either of us, shall well and truly pay and satisfy, or cause to be paid and satisfied, out of our estates, real or personal, such judgment as may be rendered by the hon. the supreme court of Louisiana in the premises, then the obligation to be null and void, otherwise in full force and effect.

Signed, S. ANDERSON,
C. B. McKIERNAN.

(Endorsed.)—No. 216; Perry vs Anderson; appeal bond filed May 20th, 1842.

J. W. COUCH, *Dep. clerk.*

Citation of appeal.

STATE OF LOUISIANA, *parish of Madison, ninth district court:*

LILBURN P. PERRY
vs.
SAMUEL ANDERSON. }

To Lilburn P. Perry, residing out of the State of Louisiana.

Whereas Samuel Anderson, appellant, has filed his petition and obtained an order of appeal from the judgment rendered in the above entitled suit, and has given bond and security according to law, now, therefore, you are hereby cited to be and appear in the supreme court of Louisiana, to be holden at Alexandria, in this State, on the first Monday in October next, to answer to said petition according to law.

Witness the honorable Thomas Curry, judge of the ninth district
[L. s.] court, for the parish of Madison, this 13th day of July, A. D. 1842.

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH, *Dy. clerk.*

Rec'd July 13th, 1842, and served July 27th, 1842, by handing a certified copy of this citation of appeal, and of the petition, to Samuel Hogan, a free white person over the age of 14 years, and residing in the same house with R. C. Stockton.

L. H. BRYAN, *Dept. sheriff.*

PARISH OF MADISON, LA., *July 27th*, 1842.
Service, 2 50; mileage, 1 75.

Endorsed—No. 216; Madison dist. court; citation of appeal to R. C. Stockton filed Aug. 1st, 1842.

J. W. COUCH, *Dep. Clk.*

STATE OF LOUISIANA, *parish of Madison, ninth district court:*

I do hereby certify the foregoing fifty-eight pages to be a true and correct transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause wherein Lilburn P. Perry is plaintiff, and Samuel Anderson is defendant; No. 216 of the docket of said court.

Witness my signature and impress of the seal of said court, this
[L. s.] 28th day of April, A. D. 1843.

JOHN T. MASON, *Clerk.*
By A. R. POTTER, *Dy. clerk.*

Petition and affidavit filed in the 9th dist. court of La., in the suit of Lilburn P. Perry vs. Samuel Anderson.

To the honorable Frederick H. Davis, judge of the ninth judicial district of the State of Louisiana, holding sessions of the district court in and for the parish of Madison.

The petition of Lilburn P. Perry, residing in St. Louis, in the State of Missouri, respectfully represents, that Samuel Anderson, residing in the parish of Madison aforesaid, is justly indebted to your petitioner in the sum of thirty-nine thousand nine hundred and ninety-nine dollars ($39,999) due and payable as hereinafter stated, for this, to wit: That on the first day of March, one thousand eight hundred and thirty-nine, the said Samuel Anderson executed and signed his three several obligations or notes, each of said notes being for the sum of thirteen thousand three hundred and thirty-three dollars, and payable to Lilburn P. Perry, your petitioner; one on or before the first of January, A. D. 1842; one on or before the first of January, A. D. 1843; and the third and last due and payable on or before the first of January, A. D. 1844; said obligations being for value received for land and negroes purchased of Clayton Tiffin and the said Lilburn P. Perry; all which will fully appear by reference to said obligations, which are annexed and made part of this petition; and which said obligations were

then and there delivered to your petitioner, who is their legal owner. That, on the ninth day of July, A. D. 1839, the said Samuel Anderson, by authentic act passed before Richard Charles Downes, parish judge and ex officio notary public in and for the parish of Madison aforesaid, for the purpose of more effectually securing the payment of the aforesaid three obligations when they should become due and payable, did specially mortgage and hypothecate unto, and in favor of your petitioner, the following described property, lands and slaves, to wit: 1st. A plantation situated in the parish of Madison, and fronting and lying on the Mississippi river about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres, more or less, and was acquired by the mortgager from the said Lilburn P. Perry and Clayton Tiffin, by act passed before said judge and notary on the 10th of April, A. D. 1838; and secondly, the following negro slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six years, Julia Ann, his wife, twenty-six, Betsey, William, and Everett, their children, all aged under ten years; Sandy, thirty, Letha, his wife, twenty-eight, and their children, Melinda, twelve, Julia, Hutchinson, and Amy, under ten years; George, thirty-four, Rhoda, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children, John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Harry, under ten years of age; Jesse, twenty-eight; Fountain, forty; Sally, thirty; Ned, forty; Jordan, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, *four*; Katy, 45; Joe, forty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Parish, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant; and Overton, aged about twenty-five years. The said mortgager in said act binding himself not [to] alienate, mortgage, or encumber said mortgaged premises to the prejudice of your petitioner; which said act of mortgage was duly accepted by John M. Perry, the agent of your petitioner, and immediately thereafter duly recorded by the said parish judge and recorder of mortgages; all which will fully appear by reference to a duly certified copy of said act of mortgage, annexed to and made part of this petition. Shews that in virtue of the premises aforesaid Anderson is justly and really indebted to your petitioner in the amount hereinbefore stated. Your petitioner shews that he verily believes that said Anderson is about leaving permanently the State of Louisiana, and will, unless restrained by the conservative process of this court, remove his property out of the State before the aforesaid debt or any part thereof becomes due, and that there-

by your petitioner will loose the security for the payment of his said debt.

Wherefore petitioner prays that a writ of attachment may issue, that the same be levied upon the before mentioned hypothecated plantation, and the crops of the present year made thereon, gathered or ungathered, the negroes hypothecated as aforesaid, and their increase; and that the same be taken into the custody of the sheriff of this parish, there to await the further order of this court; and for general relief in the premises, &c., and that he recover the of this proceeding.

(Signed,) MARTIN, RICHARDSON & STACY,
Attorneys for petitioners.

Affidavit.

John M. Perry, being duly sworn, deposes and says, that he is the agent and attorney in fact of Lilburn P. Perry, the plaintiff in the foregoing petition, who is now absent from the State of Louisiana; that the defendant, Samuel Anderson, is justly indebted to said plaintiff, Lilburn P. Perry, in the sum of thirty-nine thousand nine hundred and ninety dollars, due and payable as set forth in in said petition; that, to the best of the knowledge and belief of this deponent, the said Anderson is about leaving permanently the State of Louisiana, without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against him previous to his departure; and that said debtor, Anderson, is about to remove his property out of the State of Louisiana before the aforesaid debt, or any part thereof, becomes due; and that all the facts and allegations contained in the foregoing petition are true and correct.

JOHN M. PERRY,
Agent for L. P. Perry.

Sworn to and signed in open court, before me, this 23d November, 1839.

JOHN T. MASON, *Clerk.*

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing is a true copy of the petition and affidavit on file, and of record in the clerk's office of the ninth district court in and for the parish and State aforesaid.

[L. s.] Witness my signature and the seal of said court, this 7th of Dec'r 1842.

(Signed) J. W. COUCH,
Deputy clerk of said court.

Commission.

Circuit court of the United States, for the ninth judicial circuit court, holding session in and for the eastern district of Louisiana:

To Duncan N. Hennen, esq., U. S. commissioner.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, B. A. Crawford, and him duly examine on oath, touching and concerning certain matters and things in a cause *no* depending in the said court, wherein Tiffin and Perry are complainants, and Samuel Anderson and others are defendants, and the same examinations, as taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this thirtieth day of May, anno domini 1843, and the sixty seventh year of the independence of the United States of America.

(Signed) D. N. HENNEN, *Cl'k.*
By H. B. PAGE, *Dep'ty clerk.*

Testimony of B. A. Crawford, offered and filed by complainants in evidence, and read on the trial of the cause.

(Signed) D. N. HENNEN, *Cl'k.*
By H. B. PAGE, *Dep'ty clerk.*

TIFFIN & PERRY,
vs.
SAMUEL ANDERSON et als. } In equity.

Cir. Ct. U. S. E. Dist. of La.

Interrogatories to be propounded to B. A. Crawford, a witness residing in the city of New Orleans, the answers thereto, under oath, to be used as evidence upon the trial of the issue in the above entitled suit.

1st. Are you a counsel and attorney at law, practising as such at the bar of the State of Louisiana, and were you in the year 1839?

2d. Did you appear in your aforesaid capacity in the defence of a suit instituted by Mosely and Bouldin, in 183 , against John M. Perry and Lilburn P. Perry, in the circuit court of the United States for the eastern district of Louisiana?

3d. Will you please state if you ever received any authority, either directly or indirectly, from Lilburn P. Perry, or from any one on his behalf, to appear and represent and defend his interest in said suit?

4th. Were you, or not, employed by John M. Perry alone for his defence, without any direction or request to appear on behalf of Lilburn P. Perry; and was, or not, your appearance on behalf of the defendants in said suit, an inadvertence on your part?

5th. Did you, or not, know at the time of your said appearance, that the said Lilburn P. Perry had never been served with process of citation in said suit, and at the time of its institution that he was a citizen of Missouri, residing in the city of St. Louis?

(Signed) FRANCIS H. UPTON,
Solicitor for compl't.

(Endorsed.)—Filed May 1st, 1843.
(Signed) D. N. HENNEN, *Cl'k.*
By H. B. PAGE, *Dep. cl'k.*

TIFFIN & PERRY
vs.
NELSON F. SHELTON, and others.

Fifth circuit court of the United States, eastern district of Louisiana.

The defendant Nelson F. Shelton, specially excepts to the time and manner of taking the testimony of B. A. Crawford, attorney at law, as being unauthorized by the rules and practice of the courts of equity, and also to all evidence to be obtained from said Crawford tending to annul his official acts as being illegal and unequitable as to him; reserving his exceptions, and praying that the testimony obtained from said witness may be rejected, he propounds the following cross interrogatories:

1st. If you filed an answer, and amended answer, to the suit of Mosely and Bouldin against John M. Perry and Lilburn P. Perry, in the federal court early in 1839, in the name of both defendants, did you never receive any instructions from Lilburn P. Perry to do so, or as to the suit; did he never converse with you about the suit, either before or since; did he never write to you in relation to it, either before or since?

2d. Was not John M. Perry his agent or attorney in fact; did you not see, in his hands, authority to act for Lilburn P. Perry; have you not reason to believe, and what reason, that he had authority to defend that suit?

3d. Was not John M. Perry, the father of Lilburn P. Perry; was he not his agent generally in Louisiana; did not Lilburn P. Perry at some time avow and ratify the act done by John M. Perry for him?

4th. Was there any defence for Lilburn P. Perry which John M. Perry did not make; are you not satisfied that the claim of Mosely and Bouldin against him was perfectly just?

5th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

(Signed,) ISAAC T. PRESTON,
Solicitor for defendants.

(Endorsed.)—Filed, May 8th, '43; cross interrogatories.
D. N. HENNEN, *Clk.*
By H. B. PAGE, *Dy. clerk.*

Answers to interrogatories.

TIFFIN & PERRY
vs.
SAMUEL ANDERSON et als. } Circuit court U. S.—In chancery.

Bennet A. Crawford, esq., a witness in behalf of the complainants, being produced before me, by virtue of the annexed commission, and duly sworn, answers to the 1st interrogatory as follows:

He answers, yes.

To the 2d. He answers, yes.

To the 3d. He answers, he has no recollection of having received any authority, either directly or indirectly, from Lilburn P. Perry, or from any one on his behalf, to appear and represent and defend his interest in said suit, other than what might be inferred in a letter from John M. Perry, informing him that he would see upon the records of the court of the United States a suit, commenced against him and others by H. Mosely and Bouldin, and his wish to employ him to defend it. In no other part of his letter is reference made to the name of Lilburn P. Perry.

To the 4th. He answers, he was employed by J. M. Perry in said letters aforesaid, and without any directions or request to appear on behalf of Lilburn P. Perry, other [than] what may be inferred from the letters aforesaid. Deponent regards his appearance on behalf of any other person *that* John M. Perry in said suit as an inadvertence on his part.

To the 5th. Deponent did not know, at the time of his said appearance, that Lilburn P. Perry had never been served with process of citation, and only presumed that it had been done; and accordingly *misted* him, as far as it has been done in the answer of John M. Perry. Deponent did not know, of his own knowledge, that at the time of the institution of the said suit that Lilburn P. Perry was a citizen of St. Louis, Missouri.

To the first cross-interrogatory he saith: In relation to the answers referred to in the said interrogatory, deponent has no recollection of having received any instructions from Lilburn P. Perry on the subject; nor of his having conversed with him about the suit before filing said answers; nor of his having conversed with him about the said suit, until after the rendition of judgment against him; nor of his having ever written to him in relation to it, either before or since its institution.

To the 2nd cross-interrogatory. Deponent does not know that John M. Perry was agent, or attorney in fact; deponent never saw in [his] hands any authority to act for Lilbourn P. Perry; deponent had no reason to believe that John M. Perry had authority to defend the said suit for Lilburn P. Perry.

To the 3rd cross-interrogatory. John M. Perry has been regarded as the father of Lilburn P. Perry; deponent has no knowledge o his being his agent generally in Louisiana; deponent has no knowledge that Lilburn P. Perry ever avowed or *satisfied* the acts done by John M. Perry for him.

To the 4th cross-interrogatory. I know of no other defence for Lilburn P. Perry, than what is stated in my answers to the interrogatories of the plaintiff, and in my answers to the foregoing cross-interrogatories. I have no personal knowledge of the claim of Mosely & Bouldin, and have not heard or seen any thing to satisfy me that it is just.

To the 5th. I do not know, nor can I set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, nor either of them, or that may be material to the subject of my examination, or the matters in question in the cause.

(Signed) B. A. CRAWFORD.

Sworn to and subscribed before me, this 1st June, 1843.

DUNCAN N. HENNEN,
Commissioner.

Commission.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana.

To C. B. McKiernan, esquire, of the parish of Madison:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call, and cause to come before you, and duly examine, on oath, touching and concerning certain matters and things in a *cas* now depending in the said court, wherein Tiffin & Perry are plaintiffs, and Samuel Anderson and als. are defendants; and the same examinations, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this twenty-ninth day of April, anno domini 1843, and the sixty-seventh year of the independence of the United States of America.

[L. s.]

(Signed) DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Deputy clerk.*

Interrogatories.

TIFFIN & PERRY, vs. SAMUEL ANDERSON et als. } In equity.

Circuit court U. S. for the eastern district of Louisiana.

Interrogatories to be propounded to J. B. Bemiss, George W. Grove, Samuel Anderson, and others, witnesses, residing in the parish of Madison, and State of Louisiana; the answers thereto, under oath, to be used as evidence upon the trial of the issue in the above entitled suit.

1st. Are you acquainted with the facts and circumstances in connexion with the purchase of the plantation and slaves in controversy in this suit, by Samuel Anderson from Clayton Tiffin and Lilburn P. Perry, in 1838, and the mortgage given by the said Anderson to secure a certain portion of the purchase money?

2nd. Do you or not know that the note for the sum of $18,000, signed by H. R. Austin, Wylie Bohannan, and Ragan, was given by the said Samuel Anderson to John M. Perry, as the authorized agent of Tiffin & Perry, as a portion of the cash payment for the purchase of said property?

3rd. Do you or not know that, at the time of the transfer of said note for the purpose aforesaid, the said Austin, Bohannan, and Ragan were hopelessly insolvent; that they were so considered by the said Samuel Anderson, and that he regarded said note as worthless?

4th. Do you or not know that said Austin, Bohannan, and Ragan, have so remained ever since said period; that they have been pursued to insolvency; and that nothing has been realized upon said note transferred as aforesaid?

5th. Do you or not know that Robert Anderson and Nelson F. Shelton, at the time when they received the mortgage of the property in controversy from Samuel Anderson, from which they derive the title which they set up, were fully aware of the fact, that the note of Austin, Bohannan, and Ryan, for the sum of $18,000, had been transferred by Samuel Anderson, their mortgager, to John M. Perry, as the authorized agent of Tiffin & Perry, as a portion of the cash payment for the purchase of said property by said Samuel Anderson from the said Tiffin & Perry? Did they or not know that said note had not been in any part paid; that said Austin, Bohannan, and Ryan were hopelessly insolvent; and were so at the time of the transfer of said note?

6th. Do you or not know that said note of $18,000 was in fact the property of Nelson F. Shelton, and that the mortgage given by Samuel Anderson, was given to said Shelton in part to secure to him that sum, of which said note was the evidence?

7th. Are you acquainted with the facts and circumstances in connexion with the pretended purchase by Samuel Anderson of the

three notes signed by himself, each for the sum of $13,333, payable to Lilburn P. Perry in three, four, and five years from their date, and dated the 1st of March, 1839, with the mortgage of the property in controversy, given by the said Anderson to the said Perry to secure the payment of said notes? Did or did not said purchase take place at a marshal's sale in January, 1840, upon a writ of fieri facias which issued out of the U. S. circuit court of this district, upon a pretended judgment recovered by Mosely & Bouldin against Lilburn P. Perry?

8th. Do you or not know that, at the time of said pretended purchase by the said Samuel Anderson, of said notes and mortgage as aforesaid, he, the said Anderson, was well aware, that although said notes were on file in the district court of the ninth district, in a suit instituted in the name of Lilburn P. Perry, that said notes and mortgage were not the exclusive property of said Lilburn P. Perry, but that they belonged to the said Perry and Clayton Tiffin, as evidence of the debt due to them from the said Samuel Anderson for the purchase of the property described in said mortgage?

9th. Do you or not know that, at the time of said pretended purchase by the said Samuel Anderson, he was well aware of the fact that one of said notes had been previously endorsed, and actually transferred and delivered to the said Clayton Tiffin in good faith, and for a valuable consideration?

10th. Do you or not know that, at the time of said pretended purchase by the said Samuel Anderson, he was advised not to make the same, that he would be considered as holding said notes in trust for the use of Tiffin & Perry?

11th. Do you or not know that the said Robert Anderson and Nelson F. Shelton, at the time when they received their mortgage of the property in dispute from the said Samuel Anderson, under which their claim in defence is set up, were well aware of all the facts and circumstances in connexion with said pretended purchase by the said Samuel Anderson at the marshal's sale aforesaid? Did they or not know, that although said notes were on file in the district court of the ninth district, in a suit instituted in the name of Lilburn P. Perry, that said notes were nevertheless not the property of the said Lilburn P. Perry exclusively, but that they belonged to the said Perry and Clayton Tiffin? Did they or not know that, at the time of said pretended purchase by Samuel Anderson, one of said notes, for the sum of $13,333, had been actually endorsed and delivered to the said Clayton Tiffin in good faith, and for a valuable consideration? Did they or not know that, at the time of said pretended purchase, the said Samuel Anderson was advised not to make the same, that he would be considered as making it for the use and benefit of the said Tiffin & Perry? And did they or not know, at the time of receiving their mortgage as aforesaid, that the said Samuel Anderson, their mortgagor, had never paid to Tiffin & Perry, his vendors of said property, one dollar of the considera-

tion of said purchase, saving a note which had been previously given by them for the purchase of several slaves from said Samuel Anderson, which were included in their sale to him?

12th. With regard to the endorsement, transfer, and delivery of one of the notes for $13,333 to Clayton Tiffin, as spoken of in the previous interrogatories, do you know of the same of your own knowledge? Was the same done in your presence?

13th. Do you or not know that at the time of the conveyance, from Tiffin and Perry to Sam'l Anderson, at the time of said Anderson's mortgage, at the time of his pretended purchase, and at the time of his mortgage in favor of Robert Anderson and Nelson F. Shelton, the said Lilbourn P. Perry was in fact a citizen of Missouri, residing in St. Louis, and had no residence whatever in the State of Louisiana?

14th. If you know of any other matter or thing which may be beneficial either to the complainants or respondents herein, will you please state the same as particularly as if you were specially interrogated thereto.

Signed FRANCIS H. UPTON,
Solicitor for compt's.

(Endorsed.)—Offered in evidence by complainants, and read on the trial of the cause; filed June 5th, 1843.

(Signed) D. N. HENNEN, *Clerk.*
By H. B. PAGE, *D'y C'lk.*

TIFFIN & PERRY,
vs.
SAMUEL ANDERSON and others.

The defendant, Nelson F. Shelton, specially excepts to the time of taking the testimony of the plaintiffs, and to the form and manner of taking the same, (and especially to the examination of witnesses not named;) to the interrogatories or leading questions to the testimony sought, as far as the same is contradicted by records, and to the whole of it, as not binding upon him, and reserving all other exceptions which he can take to the same, propounds the following cross interrogatories:

1st. How, and from [what] do you know any thing else, which you state of the purchase mentioned in the first interrogatory, than what is contained in the notarial bill of sale, and a subsequent act of mortgage?

2d. If you speak of the eighteen thousand dollar note, mentioned in the 2nd and 3rd interrogatories, annex it or a copy, with all the endorsements; were not the plaintiffs, or either of them, or John M. Perry, a party liable on said note to Samuel Anderson or holder; if John M. Perry was, was he not interested in the land and negroes sold, and what interest? If not, was he not *was he not* the agent of the vendors, and authorized by them to receive the note as cash; have you not heard so from said agent, from the the plaintiffs, or either of them, or Samuel Anderson; for what

was the eighteen thousand dollar note given; for whose property, and what has become of the property?

3rd. If suit has been prosecuted, as mentioned in the fourth interrogatory, annex a copy of the record, and especially *then*, by whom and against whom, and when and where was the suit prosecuted?

4th. Did not the public records shew to Nelson F. Shelton, that the said note, if taken at all, had been taken as cash; if any person told him the contrary, state who it was, when, where, and in whose presence?

5th. How and from whom did you learn the said note belonged to Nelson F. Shelton, and if it did, what property of Shelton's was given for the note, and to whom; did not plaintiffs, or their agent John M. Perry, realize that property, or a part of it?

6th. Was not John M. Perry the agent of Lilburn P. Perry, in bringing the suit mentioned in the eighth interrogatory, and also the agent at the time of both the complainants in this suit; did they, or either of them, disavow his acts or oath, in bringing said suits; if so, when, where, to whom, and in whose presence?

7th. In answering the 11th interrogatory, tell only what you heard Nelson F. Shelton say, or what was said to him in your presence, and state who else was present, and when, and where the conversation occurred; if you speak of the note mentioned in the 11th interrogatory, give a copy of it, who were the parties to it, when its date and maturity; was it not signed by John M. Perry and others, and for twelve thousand dollars; was not he interested in the land and slaves sold to Samuel Anderson; and did not the complainants in this suit keep the title in their name, to cover the property from their creditors? Did not said John M. Perry pretend to hold a third of the land and slaves, notwithstanding the sale to Anderson; is he not interested in this suit, and is not the same prosecuted for his benefit?

8th. To George N. Groves and John B. Bemiss. Do not your depositions in the circuit court of the 9th circuit, in the case of Clayton Tiffin vs. Samuel Anderson, contain the truth and the whole truth, as to your knowledge of the matters to which you were examined?

(Signed) ISAAC T. PRESTON,
Solicitor for defendants.

(Endorsed)—*Cross interrogations*, filed May 8th, 1843.
DUNCAN N. HENNEN, *Cl'k.*
By H. B. PAGE, *Dep'ty Cl'k.*

Answers to interrogations.

STATE OF LOUISIANA, *parish of Madison:*

I, Charles B. McKiernan, a commissioner appointed to take certain depositions mentioned in the annexed commission, to me directed, by the clerk of the circuit court of the United States, for

the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, have this 30th day of May, A. D. 1843, caused to come before me, at the house of Bernard McKiernan, in the parish and State aforesaid, George W. Grove, competent witness, who being duly sworn to speak the truth, in a certain matter now pending in the circuit court of the United States, for the fifth judicial circuit in the eastern district for Louisiana, wherein Lilburn P. Perry and Clayton Tiffin are plaintiffs, and Samuel Anderson and others are defendants, deposeth and sayeth:

George W. Grove answers the 1st interrogatory: I know that the sale mentioned was made; I was present when the transfer was made; [was] then, and am still residing in the immediate vicinity of said tract of land, and was acquainted with all the parties.

2nd interrogatory. I only know from what both parties told me, that said $18,000 note on Austin, Bohanna and Ragan, was given by said Samuel Anderson as part of the payment of said property, but do not know, w[h]ether it was considered as cash or not.

3rd interrogatory. I do not know any thing about the situation of said Austin, Bohannan and Regan; I do not know them; I only know that Samuel Anderson informed me, that he considered them insolvent, and the note as worthless; and that he considered by the purchase he made of Tiffin and Perry, and paying them that note, that he had saved that amount for his uncle, Nelson F. Shelton, who was the true owner of the $18,000 note, as the same had been given for negroes sold by said Samuel Anderson, which negroes belonged to said Nelson F. Shelton.

4th interrogatory. I do not know any thing about them as above stated.

5th interrogatory. I do not know any thing about the knowledge of Shelton and Robert Anderson, about the situation of the parties to the $18,000 note, or whether any part of the same had been paid, or not.

6th interrogatory. I only know that Nelson F. Shelton was the true owner of said $18,000 note, from what Samuel Anderson frequently stated to me; he stated to me, as I have said in my answer to the 3rd interrogatory, that the said note was given for negroes sent by said Nelson F. Shelton to Mississippi, to be sold by said Samuel Anderson, and that he, Samuel Anderson, had no interest in said note, and that said mortgage, given by said Samuel Anderson to Nelson F. Shelton, was to secure the payment of that sum of $18,000, with other debts he owed them.

7th interrogatory. I know nothing about said purchase of my own knowledge.

8th interrogatory. Shortly after the contract was entered into for the sale of said property, I heard a conversation between Dr. Clayton Tiffin and Samuel Anderson. Dr. Tiffin then said that he was to have the first note of $13,333, that he had advanced money for the farm while he owned it, and then held three notes of John M.

Perry and Samuel Anderson, for upwards of four thousand dollars each, as security for his advances, until the mortgaged notes were executed. Mr. Anderson said that the executions of the authentic conveyance and mortgage, and execution of the notes, had been postponed a few months to give said Samuel Anderson an opportunity to procure up any debts he could against Dr. L. P. Perry or John M. Perry; that he, Anderson, was to have a credit on his purchase for any debts he could take up against either of the Perrys. In a subsequent conversation that I heard between Dr. C. Tiffin and Samuel Anderson, in the spring or fall of 1839, it was after the execution of the mortgage and notes for said purchase, Dr. Tiffin informed Mr. Samuel Anderson that he was the owner of his first mortgaged note, that he owned the whole note, and Mr. Anderson agreed to pay Dr. Tiffin fifty bales of cotton, to be credited on said note; the Doctor agreed on receiving the proceeds of said fifty bales of cotton, or the cotton itself, to give a credit on said $13,333 note, and to give said Samuel Anderson a longer time to pay the balance of the note than the time specified in the note, and to give up the three notes on John M. Perry and Samuel Anderson. I believe Dr. Tiffin was to take the cotton at twenty-five hundred dollars.

The cotton was to have been delivered to me for Dr. Tiffin, but Anderson failed to deliver the same. The first note, I always understood from all the parties, was exclusively the property of Dr. Clayton Tiffin; said Tiffin complained that said note was not made payable to him, as was agreed upon by the parties, in the place of Dr. L. P. Perry, to whom it was made payable, and endorsed by him to Tiffin. I do not know what interest Tiffin had in the other two notes; the property was considered as the joint property of L. P. Perry and Clayton Tiffin. Tiffin claimed the first note on account of advance made by him for the plantation. I heard Tiffin complain of John M. Perry for filing his note in the suit he brought in the ninth district court for the parish of Madison, in the State of Louisiana.

9th interrogatory. I refer for answer to this interrogatory to my answer to the 8th interrogatory.

10th interrogatory. I heard Mr. Samuel Anderson say that his attorney, Mr. Bemiss, advised him not to purchase said notes at the marshal's sale.

11th interrogatory. I know nothing about the matters contained in the eleventh interrogatory.

12th interrogatory. All I know about the transfer, &c., of said note is contained in my answer to the 8th interrogatory.

13th interrogatory. Dr. Lilburn P. Perry informed me some months before said sale, that he wished to sell out his interest in said plantation, and move to St. Louis, Missouri; that this climate did not agree with him or his family; he left here the last of October, or first of November, 1838, and said he was going to St. Louis, Missouri; when he left, and for some time before, he said he was

going to leave here permanently; that he intended spending the balance of his days at St. Louis; said Perry has not been here but once since then, and remained but a few days.

14th interrogatory. I have stated all I now recollect on the subject of controversy between the parties.

Cross interrogatories.

1st cross interrogatory. I have stated all I know relative to the maters refered to in this cross interrogatory in my answer to the direct interrogatories, and refer to them for my answer to this.

2d cross interrogatory. I cannot annex a copy of the $18,000 note, as I never saw the same; I only heard it spoken of, as will be seen by reference to my answers to the direct interrogatories; neither the plaintiffs nor John M. Perry were in any way bound for said $18,000 note as Mr. Samuel Anderson informed me; if John M. Perry had any interest in the land and negroes sold to Samuel Anderson, I do not know it. I do not know that John M. Perry was the authorized agent of the plaintiffs, or whether he was authorized to receive said note as cash or not. As for what said note was given, I refer to my answers to the direct interrogatories; I do not know what has become of the negroes for which the note was given.

3rd cross interrogatory. I know nothing about the suit referred to.

4th cross interrogatory. I know nothing of what the record shows.

5th cross interrogatory. I refer, for answer to this interrogatory, to my answer to the direct interrogatories.

6th cross interrogatory. I do not know any thing of John M. Perry's agency for the plaintiffs; all I know is what Dr. Tiffin said to me, at my house, about John M. Perry's having filed his note in the suit he commenced in the 9th district court for the parish of Madison: the doctor complained bitterly of J. M. Perry's filing his note in that suit; he said that the note ought to have been taken in *in* his name at first, and not in L. P. Perry's; he expressly denied that J. M. Perry had any right to control his said note.

7th cross interrogatory. I refer for my answer to my answer to the 11th direct interrogatory. I do not know, as I have before stated, whether John M. Perry had any interest in said property. I have heard J. M. Perry and Samuel Anderson say, that after L. P. Perry and Clayton Tiffin had sold to Anderson, that Samuel Anderson had, by verbal agreement, agreed to sell one-third of said property to John M. Perry at the same it cost him, but that said agreement was never carried into effect. I do not know whether John M. Perry has any interest in this suit, or whether it is prosecuted for his benefit.

8th cross interrogatory. I have not a distinct recollection of the interrogatories propounded to me in the examination referred to. I have no doubt but that I then stated all I recollected and knew to be true. I have since that time had frequent conversations with Samuel Anderson on the subject of the controversy between the parties, and my recollection has been refreshed, and many things

perhaps brought to my mind that I did not then recollect or state; and further this deponent sayeth not.

(Signed) GEO. W. GROVE.

Sworn and subscribed before me, on the 30th day of May, A. D. 1843.

(Signed) C. B. McKIERNAN, *Commissioner.*

STATE OF LOUISIANA, *parish of Madison:*

I, Charles B. McKiernan, commissioner appointed to take the deposition mentioned in the foregoing commission, do hereby certify, I have taken the same at the time and place set forth in the said caption to said depositions; that the same was taken in my handwriting, and that the agent of the plaintiffs, John M. Perry, was present—no one present on the part of the defendants; that the interrogatories and cross interrogatories were all propounded to the witness, and the answers thereto have not in any wise been altered or changed since they were signed and sworn to. And I now seal up the same and hand them to H. W. Dunlap.

Given under my hand and seal, this 30th day of May, anno domini 1843.

(Signed) C. B. McKIERNAN, [SEAL.] *Commissioner.*

Transcript.

Civil proceedings in the circuit court of Hinds county, State of Mississippi, held at the court house in Raymond, on the third Monday in December, in the year A. D. one thousand eight hundred and forty-two, before the honorable John H. Rollins, judge of the seventh judicial district of said State, therein solely presiding.

Be it remembered, that a writ of capias ad respondendum was issued out of the court aforesaid, and return made thereon in the words and figures following, to wit:

The State of Mississippi to the sheriff of Hinds county, greeting:

We command you, that you take Hugh R. Austin, Jesse B. Ragan, and Wylie Bohannan, if to be found in your county, and *the* safely keep [them], so that you have them before the circuit court, to be holden in and for Hinds county, at the court house thereof, on the fifth Monday after the third Monday of October, 1839, to answer Samuel Anderson, who sues for the use of Clayton Tiffin, of a plea of trespass on the case upon promises, to plaintiff's damages thirty thousand dollars. And have then there this writ.

Witness, J. R. Nicholson, judge of the seventh judicial district of said State, the 5th Monday after the 3d Monday of April, 1839, and seal of said court.

Issued 22d day of October, 1839.

G. E. BEAUCHAMP, *Clerk.*

By D. S. BEAUCHAMP, *Deputy clerk.*

This is an action of assumpsit, founded on defendant's promis-

sory note for $18,282 $\frac{65}{100}$, dated the 10th day of September, 1838, and payable to the plaintiff, or order, on the first day of April, 1839. No bail, but judgment will be required at the return term of this court. MARTIN, SCOTT & THOMPSON.

P. Q.—Declaration filed when writ issued.
Teste: G. E. BEAUCHAMP, *Clerk.*

Rec'd Oct. 22d, 1839. WM. C. DEMOSS, *Sheriff.*

Executed as to Austin, Oct'r 24th, 1839.
WM. C. DEMOSS, *Sheriff.*
By L. B. SEATON, *D. S.*

Executed as to Ragan, Nov. 4th, 1839.
W. C. DEMOSS, *Sheriff.*
By L. B. SEATON, *D. S.*

Bohannan not found, Nov. 9th, 1839.
W. C. DEMOSS, *Sheriff.*

And at the issuing of said writ, the plaintiff filed his declaration in the words and figures following, to wit:

THE STATE OF MISSISSIPPI, *Hinds county,*
Circuit court, November term, in the year 1839:

Samuel Anderson, who sues for the use of Clayton Tiffin, by attorney, complain of Hugh R. Austin, Jesse B. Ragan, and Wylie Bohannan, in custody, &c., of a plea of trespass on the case upon promises; for that whereas, the said defendants, heretofore, to wit, on the tenth day of September, (*Sept.*,) in the year of our Lord one thousand eight hundred and thirty-eight, (1838,) at Mississippi springs, in the county aforesaid, by the name and styles of H. R. Austin, J. B. Ragan, Wylie Bohannan, made these certain promissory notes in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory [notes] to the said plaintiffs, and thereby then and there promised to pay, on the first day of April, eighteen hundred and thirty-nine, to the said plaintiff, or order, eighteen thousand two hundred and eighty-two $\frac{65}{100}$ dollars, for value received; by means whereof, the said defendants then and there became liable to pay said plaintiff the said sum of money in said promissory note specified, according to the tenor and effect thereof, and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in said promissory note specified, according to the tenor and effect thereof; yet the said defendants, not regarding their said promise and undertaking in this behalf, have not as yet paid the said plaintiff the said sum of money, or any part thereof, but to pay the same, (although often requested so to do,) have hitherto wholly failed and

refused, and still fail and refuse, to the damage of the said plaintiff of thirty thousand dollars, and therefore he brings suit, &c.

E. W. F. SLOAN,
MARTIN,
SCOTT, &
THOMPSON,
} *Plaintiff's attorneys.*

And at the return term named in said writ, the said defendants Austin and Ragan, by their attorney, plead in the words and figures following, to wit:

And the said H. R. Austin and J. B. Ragan, by their attorney, comes and defends the wrong and injury, when, &c., and for plea say, that they did not, in manner and form, undertake and promise, as the said plaintiff in his declaration has alledged; and of this they put themselves upon the country, &c.

J. J. DAVENPORT, *Defts. att'y.*

And at the March term, 1840, of said court, on the 25th day of April, 1840, leave was granted to the defendants to plead further in this behalf.

And afterwards, to wit, on the third day of October, 1840, the said defendants filed their petition for a bill of discovery, in the words and figures following, to wit:

To the honorable J. R. Nicholson, judge of the seventh judicial district of the State of Mississippi:

The bill of discovery of Hugh R. Austin, Jesse B. Ragan, and Wilie Bohannan, against Samuel Anderson, [for the] use of Clayton Tiffin, showeth unto your honor, that early in the year 1837, said Austin purchased of said Anderson a number of negroes, in part payment of which said Austin, Ragan, and Bohannan, subsequently, viz: on the 10th day of Sept., 1838, executed jointly their note for the sum of $18,218 $\frac{65}{100}$, payable to said Anderson, upon which said note suit has been instituted in the circuit court of Hinds county, Miss., in the name of said Anderson, for the use of Clayton Tiffin.

Your petitioners H. R. Austin, J. B. Ragan, and Wylie Bohannan, aver, that said negroes, for which said note was given in part payment, were by the said Anderson introduced into the State of Mississippi since the first day of May, 1833, as merchandise and for sale; and in pursuance of such intention, said Anderson sold said negroes to your petitioners as aforesaid, which negroes constitute the only consideration for which said note was given.

Your petitioners farther aver, that subsequent to the purchase of said negroes, they became responsible, as security for the said Anderson, for a large sum of money, a part of which they have been compelled to pay, and for the residue they are yet responsible. Your petitioners aver, that they know of no other person by whom they can certainly prove the foregoing facts and allegations; wherefore, they pray your honor to order the State writ of subpœna to issue

out of, and under the seal of, your honorable court, commanding the said Anderson to answer as particularly and fully, as to all the matters and things touching the foregoing allegations, as if particularly interrogated thereunto.

They will ever pray, &c.

H. R. AUSTIN, *for the Petitioners.*

Sworn to and subscribed before me, this 3d day of October, 1840.

P. M. ALSTEN, *J. P.*

And on the filing of said petition, a writ of subpœna issued, which, with the sheriff's return thereon, is in the words and figures following, to wit:

The State of Mississippi, Hinds county, to Samuel Anderson, of the county of Warren:

For certain causes offered before us, in our court of chancery of Hinds circuit court, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our court of chancery of Hinds county, to be holden at the court house in Raymond, the 17th day of October, 1840, to answer to a bill of complaint exhibited against you by Hugh R. Austin, Jesse B. Ragan, and Wylie Bohannan, complainants, in our said court, and further to do and receive what our said court shall have considered of in this behalf. And this in no wise omit, under the penalty of one hundred dollars, as well as the consequences that may fall thereon. And have then there this writ.

Witness, the honorable J. R. Nicholson, judge of the seventh judicial district of said State, the third Monday of September, 1840, and seal of said court.

Issued 3d day of October, 1840.

AMOS R. JOHNSON, *Clerk.*

To the sheriff of Warren county, to execute and return:

I acknowledge service this 6th day of October, 1840.

SAMUEL ANDERSON.

And at the December term, 1842, of said court, on a day mentioned in the caption, being the 30th day of December, 1842, came the parties, but Bohannan, to whom plaintiff dismisses his action; and thereupon on motion, a jury came, to wit:

John H. Edwards, James Hall, George W. Gibbs, William Stewart, George W. Campbell, Samuel S. Heard, Francis McNalty, Henry G. Bankston, Jordan Elder, Samuel Hobbs, Wm. B. Shearer, and John Robinson, who, being duly elected, tried and sworn the truth to speak upon the issue joined, upon their oath do say, the[y] find the issue for the plaintiffs, and assess his damage at twenty-three thousand seven hundred and sixty-seven dollars forty-three cents: wherefore, it is considered by the court, that plaintiff recover against defendants, Austin and Ragan, the sum

of twenty-three thousand seven hundred and sixty-seven dollars forty-three cents damages, assessed by the jury aforesaid, and also costs of suit. And the said defendants filed their bill of exceptions, in the words and figures following, to wit:

Be it remembered that, on the trial of this cause, and before the jury left the box, the defendants offered to read to the jury a bill of discovery as evidence, which bill of discovery was filed at the Sept. term, 1840, of said court, in the following words, to wit: (here insert the bill with the endorsements thereon;) upon which bill of discovery a subpœna issued, directed to the plaintiff Anderson, in the following words, to wit: (here insert the subpœna with the acknowledgment of service by Anderson;) which subpœna was returned to the clerk's office of said court, with the acknowledgment of service by said Anderson, and is now on file with the papers in said cause: whereupon the counsel for the plaintiffs moved the court to remove said bill from the file, and exclude it as evidence from the jury. 1st. Because the bill does not state that the parties were residents of the State. 2nd. Because the court has never ordered a discovery to be made. 3rd. Because the party from the discovery is sought, is a nominal plaintiff only; which motion was sustained by the court: whereupon, the defendants' counsel, Davenport, stated to the court, that the said bill of discovery was in fact ordered by the honorable J. R. Nicholson in open court, and offered to make oral proof of the fact; and asked the court upon such proof being made, to direct the order of discovery to be entered on the minutes of the court pro tunc, which was refused. The defendants' counsel offered to prove the signature of Anderson to the acknowledgment of service of the subpœna aforesaid, which was refused. The bill having been excluded on the grounds before mentioned, at a subsequent day of the term, the defendants' counsel entered upon the motion docket of said court a motion for a new trial, upon the ground that the court had erred in excluding said bill of discovery, and upon the ground of surprise, and for other reasons; which motion was overruled by the court. To all of which, the defendants' counsel except, and pray that this, their bill of exceptions, may be signed, sealed and enrolled, and made part of the record in said cause; which was accordingly done.

[SEAL] JOHN H. ROLLINS, *Judge, &c.*

And upon the judgment aforesaid, a writ of fieri facias issued from the court aforesaid, which, with the sheriff's return thereon, is in the words and figures following, to wit:

State of Mississippi, to the sheriff of Hinds county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Hugh R. Austin and Jesse B. Ragan, late of your county, you cause to be made the sum of twenty-three thousand

seven hundred and sixty-seven dollars forty-three cents; which Samuel Anderson, who sues for the use of Clayton Tiffin, lately in our circuit court of Hinds county, hath recovered against them, for the damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said def'ts, to the said pl'ff lately made, with interest on the said sum, at 8 per centum per annum, from the 30th day of December, one thousand eight hundred and forty-two, until paid; also, the sum of $15 75 dollars, for his costs by him about his suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record: and that you have the said moneys before the judge of our said court on the third Monday of June next, to render to the said plaintiff use, damages and costs, aforesaid. And have then there this writ.

Witness the honorable John H. Rollins, judge of the seventh judicial district of said State, the third Monday of Dec'r, in the year of our Lord one thousand eight hundred and forty-two, and seal of said court.

Issued the 11th day of Febr'y, 1842.

A. R. JOHNSON, *Clerk*,
By R. A. DOWNING, *Deputy clerk*.

Rec'd 17th Febr'y, 1843.

D. THOMAS, *Sheriff*.

No property: May 31st, 1843. D. THOMAS.

THE STATE OF MISSISSIPPI, *Hinds county:*

I, Amos R. Johnson, clerk of the circuit court of said State and county, do hereby certify, that the foregoing eight pages contain a full, true, and perfect copy of the record as the same remains in my office, including a copy of the original writ of fieri facias, with the sheriff['s] return thereon.

In testimony whereof, I hereunto set my hand, and affix the seal [L. S.] of said court the 31st day of May, A. D., 1843.

(Signed) A. R. JOHNSON, *Cl'k.*

THE STATE OF MISSISSIPPI, *seventh judicial circuit:*

I, John H. Rollins, judge of the 7th judicial district of the State of Mississippi, do hereby certify that Amos R. Johnson, whose name appears to the foregoing record as clerk, was, at the time of making and signing the certificate thereto, clerk of the circuit court of the county of Hinds, in said State and district; that said certificate is in due form of law, and by the proper officer. Given under my hand and seal, this the 31st day of May, 1843.

(Signed) JOHN H. ROLLINS, [SEAL.]
Judge of 7th district of Miss.

Tilghman M. Tucker, Governor of the State of Mississippi, to all who shall see these presents, greeting:

Be it known, that John H. Rollins, whose name is subscribed to the annexed certificate, was, on the thirty-first day of May, A. D. 1843, judge of the 7th judicial district in the State of Mississippi, that his attestation to the annexed certificate is in due form of law, and made by the proper officer, and that full faith and credit are due to all his official acts.

In testimony whereof, I have caused the great seal of the State to be hereunto affixed. Given under my hand, at the city of Jackson, this 1st day of June, A. D. 1843.

(Signed) T. M. TUCKER.

By the Governor:

LEWIS G. GALLAWAY,
Secretary of State.

(Endorsed.) Offered in evidence on the trial of the cause, and filed June 5th, 1843.

(Signed) D. N. HENNEN, *Clerk.*
By H. B. PAGE, *Dy. clerk.*

Testimony—General Dunlap.

TIFFIN & PERRY, vs. S. ANDERSON et als. } No. , in equity.

Interrogatories propounded to and answered in open court, by Gen. Hugh W. Dunlap, on the trial of the cause, June 5th, 1843.

1st. Are you acquainted with the facts and circumstances in connexion with the purchase of the plantation and slaves in controversy in this suit, by Samuel Anderson, from Clayton Tiffin and Lilburn P. Perry, in 1838, and the mortgage given by the said Anderson to secure a certain portion of the purchase money?

Answers. That he only knows what he has heard Captain Perry and Samuel Anderson say of it.

2nd. Do you or not know that the note for the sum of $18,000, signed by H. R. Austin, Wylie Bohannan, and Ragan, was given by the said Samuel Anderson to John M. Perry, as the authorized agent of Tiffin & Perry, as a portion of the cash payment for the purchase of said property?

Answers. That Samuel Anderson told him it was given as part of the first payment.

3rd. Do you or not know, that at the time of the transfer of said note, for the purpose aforesaid, that said Austin, Bohanan, and Ragan, were hopelessly insolvent; that they were so considered by the said Sl. Anderson, and that he regarded said note as worthless?

Answers. That Mr. Samuel Anderson told him that he considered, at the time the note was transferred, Bohanan, Austin, and Ragan, as insolvent. Witness believes they were insolvent at that time; he was well acquainted with them.

4th. Do you or not know that said Austin, Bohanan, and Ragan, have so remained ever since said period; that they have been pursued to insolvency; and that nothing has been realized upon said note transferred as aforesaid?

Answers. Does not recollect ever having heard them say any thing upon the subject; that S. Anderson informed him that there was an agreement about the note, made in presence of John H. Martin, but that as Martin was dead Perry could not prove it; what that agreement was Anderson did not tell.

5th. Do you or not know that Robert Anderson and Nelson F. Shelton, at the time when they received the mortgage of the property in controversy from Samuel Anderson, from which they derive the title which they set up, we[re] fully aware of the fact that the note of Austin, Bohanan, and Ragan, for the sum of $18,000, had been transferred by Samuel Anderson, their mortgagor, to John M. Perry, as the authorized agent of Tiffin and Perry, as a portion of the cash payment for the purchase of said property by said Samuel Anderson from the said Tiffin & Perry? Did they or not know that said note had not been in any part paid; that said Austin, Bohanan, and Ragan were hopelessly insolvent, and were so at the time of the transfer of said note?

Answers. Only knows what Samuel Anderson told him. He said he had informed them (Robert Anderson and Nelson F. Shelton) of it. The conversation took place since the date of last February, and in New Orleans; Mr. Shelton was not present at the time. Witness has heard Anderson state so since. States that S. Anderson told him that Robert Anderson and Nelson F. Shelton knew of the insolvency of Austin, Bohanan, and Ragan, at the time that he executed to them the mortgage to secure his debts to them. Has frequently heard Samuel Anderson say, that that note was given in part payment of some negroes sold by him as the agent of his uncle Nelson F. Shelton; that the $18,000 note constituted a part of the indebtedness of Anderson to Shelton, as mentioned in the mortgage. This conversation took place on the day when Anderson and Shelton bought the property.

8th. 8*th*. Do you or not know that, at the time of said pretended purchase, by the said Samuel Anderson, of said notes and mortgage as aforesaid, he, the said Anderson, was well aware, that although said notes were on file in a district court of the ninth district, in a suit instituted in the name of Lilburn P. Perry, that said notes and mortgage were not the exclusive property of said Lilburn P. Perry, but that they belonged to the said Perry and Clayton Tiffin, as evidence of the debt due to them from the said Samuel Anderson for the purchase of the property described in said mortgage?

Answers. That Mr. S. Anderson told him that he knew that one of the notes was Tiffin's at the time of his purchase. Said that the endorsement to Clayton Tiffin was on the back of the note, for [he] saw it on file with the papers, and that the 13,000 dollar note was

given to Tiffin as his individual property, in lieu of the three notes held by said Tiffin against John M. Perry and Samuel Anderson. Says that it was the first note of the three that was Clayton Tiffin's.

10th. Do you or not know that, at the time of said pretended purchase by the said Samuel Anderson, he was advised not to make the same, that he would be considered as holding said notes in trust for Tiffin & Perry?

Answers. Says that said S. Anderson told him he had been advised not to buy them; that he had better (get) get some one else to buy them.

13th. Do you or not know that, at the time of the conveyance from Tiffin & Perry to Samuel Anderson; at the time of said Anderson's mortgage; at the time of his pretended purchase; and at the time of his mortgage in favor of Robert Anderson and Nelson F. Shelton, the said Lilburn P. Perry was in fact a citizen of Missouri, residing in St. Louis, and had no residence whatever in the State of Louisiana?

Answer. Says that Doctor Perry was in the neighborhood about October or November, 1838, and then left, and has not, to his knowledge, been back since. Says that Doctor Perry told him he intended quitting the climate, as it did not agree with himself or his wife, and that he tried to sell witness his place; that the doctor told him, when he left, that he intended establishing himself permanently in St. Louis. Deponent recognizes the handwriting of J. H. Martin in the receipt hereto annexed; that said Martin is deseased, and that he was at the date a practising attorney; and that said receipt is in his handwriting, as well as his signature.

Receipt annexed.

Received of Dr. Clayton Tiffin, for collection, a note on Samuel Anderson for $13,333, due the 1st day of January, 1842, and dated the 1st day of March, 1839, October 22d, 1839.

(Signed) J. H. MARTIN.

TIFFIN & PERRY, vs. S. ANDERSON et als. } No. 948.

Cross-examinations of Hugh B. Dunlap, a witness on the part of the complainants.

Does not know *wether* Mr. Martin was a licensed attorney in this State; he was in Mississippi, Tennessee, and Kentucky.

Witness never knew, until he heard Grove's deposition read, that Doctor Perry had returned; he never saw Doctor Tiffin, and does not know that he ever resided in this State.

Witness never heard Nelson F. Shelton say any thing in relation to any of the matters now in controversy; that is, of the merits of the controversy, or his knowledge of any thing that had transpired in relation to it.

Captain Perry has been the agent of Tiffin & Perry in that part of the country; was understood to be, and acted as such, since the sale of the plantation to Samuel Anderson; said Perry lived upon the plantation at the time of the sale.

Witness does not recollect ever having heard Captain Perry say any thing in relation to his acquaintance with Austin, Bohanan, and Ragan; S. Anderson never told witness that Captain Perry was well acquainted with the situation of Austin, Bohanan, and Ragan.

Witness believes that S. Anderson did say that Captain Perry did tell him that he believed he could use the note of Austin, Bohanan, and Ragan, at the time of taking the same, in payment of the debts due by him and Doctor Perry.

Says that Robert Anderson has made a settlement of the matter in controversy in this suit; witness knows this from having been counsel of said Robert Anderson; that he made the compromise, and drew up the agreement between the parties.

Witness knows that S. Anderson is totally insolvent, and has applied for the benefit of the bankrupt act; and that he told him that he had not a dollar's worth of property.

Robert Anderson claims to be a citizen of the State of Virginia; has always stated that he came here to settle matters in controversy in this suit, and for no other purpose.

Does not recollect exactly when said Robert Anderson came here; it will be either two or three years this spring; he did not bring his family with him.

Nelson F. Shelton is a citizen of the State of Virginia, as he N. F. Shelton stated; he has never, to witness' knowledge, claimed citizenship in Louisiana; that he did not intend living in Louisiana; that he came here to settle his business, as Mr. Anderson did.

The first conversation with Mr. Shelton on that subject, must have taken place before the institution of this suit; that with Mr. Anderson was since the commencement of this suit.

Witness states that he was at a district court of the parish of Madison, in November, 1839, for part of one day; he did not hear of Doctor Tiffin being at the court, or in the country at the time, nor for some time before; witness lived in Mississippi at that time.

Re-examination in chief.

Witness knows that R. Anderson has resided in the parish of Madison, in this State, ever since he came out. Mr. Shelton, with the exception of an occasional absence, once to the springs and twice to Virginia, *he* has resided upon the plantation ever since he came. Mr. Shelton's family is with him; he has no children, but his wife is with him.

Mr. Robert Anderson has had three sons here, either on the plantation or in the neighborhood; Doctor Anderson and Charles Anderson, two of them, have not been here all the time.

Robert Anderson and Nelson F. Shelton have been carrying on

business as planters ever since their purchase of the plantation in controversy, which was in June, 1841.

Samuel Anderson has never told him, at any time, that Captain Perry knew the pecuniary situation of Austin, Bohanan, and Ragan, at the time he received the notes.

(Signed) H. W. DUNLAP.

Sworn to and subscribed before me, this 8th June, 1843.

(Signed] D. N. HENNEN, *Clerk.*
By H. B. PAGE, *Dep'y clerk.*

Filed June 8th, 1843.

D. N. HENNEN, *Clerk.*
By H. B. PAGE, *D'y clerk.*

Petition.

To the honorable the judges of the circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana.

The petition of Clayton Tiffin, who is a citizen of the State of Missouri, and resides in the city of St. Louis, in said State, respectfully shows, that Samuel Anderson, who is a citizen of the State of Louisiana, and resides in the parish of Madison in said State, and in the eastern district of Louisiana within the jurisdiction of this court, is justly and truly indebted unto petitioner in the full sum of four thousand five hundred and fifteen dollars, with interest at the rate of eight per centum per annum from the fourth day of March, 1839, for this, to wit: that petitioner is holder and owner of a certain promissory note for the sum of four thousand five hundred and fifteen dollars, drawn by J. M. Perry and Samuel Anderson, in solido, payable to the order of petitioner, dated at on the tenth day of April, 1838, payable the first day of March, 1839; all of which will more fully appear by reference to the said note, which is hereunto annexed *as part of this petition.*

Petitioner alleges that said J. M. Perry is not sued that the said Samuel Anderson, although thereunto requested, refused to pay the amount for which he is indeb aforesaid.

Petitioner therefore prays, that said Samuel Anderson be cited to appear and answer this petition; and that after due proceedings, be condemned to pay to petitioner the aforesaid sum of four thousand five hundred and fifteen dollars, with interest as aforesaid from the date aforesaid, and costs of suit; and for all general and equitable relief.

Signed, BALIE PEYTON, *for petitioner.*

Note annexed.

$4,515 00.

On the first day of March, eighteen hundred and thirty-nine, we, or either of us, promise to pay to the order of Clayton Tiffin, four

thousand five hundred and fifteen dollars without defalcation, and for value received, this 10th day of April, 1838.

Signed, J. M. PERRY,
" SAM'L ANDERSON.

Citation.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

CLAYTON TIFFIN
vs. } No. 577.
SAMUEL ANDERSON.

To Samuel Anderson.

You are hereby commanded to summon Samuel Anderson, and you, Samuel Anderson, are hereby cited to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this seventeenth day of February, in the year of our Lord one thousand eight hundred and forty, and of the independence of the said United States of America the sixty-fourth year.

Signed, DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received, Monday the 9th day of March, 1840, and on Friday the 13th day of March, 1840, I served *of* copy of the within citation, together with a certified copy of the plaintiff's petition, by handing them to the within named defendant Samuel Anderson in person, parish of Madison, Louisiana, four hundred and sixteen miles from New Orleans.

Sig'd, M. MARIGNY, *U. S. Marshal.*
By JOHN M. DONOHUE, [*dep.*] *U. S. Marshal.*

Judgment by default.

CLAYTON TIFFIN
vs. } No. 577.
SAMUEL ANDERSON.

On motion of the plaintiff's attorneys, and it appearing to the court that process has been duly served, and no answer filed in the legal delay, judgment by default is hereby entered in the above case.

1398.

Answer.

CLAYTON TIFFIN
vs.
SAMUEL ANDERSON.

9th judicial circuit court of the United States, sitting in and for the eastern district of Louisiana.

Said defendant by his counsel comes into court, and answering said plaintiff's petition in the above stated cause, admits his signature to the note sued upon, but denies that he is in any way indebted to plaintiff. He avers that said note has been paid and satisfied; wherefore respondent prays that it may be cancelled and delivered up to him, and that said plaintiff may be condemned to pay the costs of this suit, to be taxed, &c.

Signed, FINNEY & DUNLAP,
Att'ys for deft.

Filed April 8th, 1840. D. N. HENNEN, *Clk.*
F. DE WINT, *D'y clk.*

Affidavit.

CLAYTON TIFFIN
vs.
SAMUEL ANDERSON.

Ninth circuit, United States court.

Samuel Anderson, the defendant, being duly sworn doth depose and say, that he placed his papers in this suit in the hands of B. G. Tenney, esq'r, to file his answer before the commencement of the term; but that Mr. Tenney, from errors or occupation, has not filed his answer; that he has a substantial defence and is prepared to file his answer, and prays the judgment by default to be set aside.

Signed, SAM'L ANDERSON.

Sworn to and subscribed before me at New Orleans, this 11th day of April, 1840.

D. N. HENNEN, *Clk.*
By F. A. FOYGNET, *D'y clerk.*

Filed April 13th, '40. D. N. HENNEN, *Clk.*
By F. A. FOYGNET, *D'y clk.*

Rule.

CLAYTON TIFFIN
vs.
SAMUEL ANDERSON. } No. 577.

On motion of I. T. Preston, esq'r, of counsel for the defendant, and upon filing his affidavit, it is ordered that the plaintiff show cause on to morrow, the 14th inst., at 10 o'clock, A. M., why the judgment by default entered in this case should not be set aside, and the defendant have leave to file his answer.

Filed 13th April, 1840.

Entry of 14th April on record.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 577.

The rule heretofore taken by the defendant to shew cause why the judgment by default in this case should not be set aside, and the defendant have leave to file his answer, came this day before the court; Bailie Peyton, esq., appearing for plaintiffs, and I. T. Preston, esq., for the defendant; whereupon, by consent of parties, the same was made absolute.

Answer.

To the honorable circuit court of the United States for the ninth circuit, in and for the eastern district of Louisiana, the answer of Samuel Anderson to the petition filed in this honorable court against him by Clayton Tiffin, respectfully shews:

That it is true he signed the note in plaintiff's petition described as the security of John M. Perry, but he alledges that the said note, and two others of the same amount, were given for the interest of the said Tiffin in a tract of land in the parish of Madison. Your petitioner alledges that, at the time it was agreed and understood, that as soon as your petitioner should give an other note, secured by mortgage on the land, of the aggregate amount of the said three notes, including the one sued upon, should be cancelled and given up. Now, your respondent shews that, shortly afterwards he did give another note, in consideration of the purchase of said land, for the amount of about thirteen thousand dollars, thus covering the three existing notes, and which note of thirteen thousand dollars your respondent gave, and secured by mortgage on the land and negroes purchased, and which said note was thereupon transferred to the said Clayton Tiffin in exchange and extinction of the note now sued upon, and which your respondent no longer owes.

Your respondent, therefore, respectfully prays that the note sued upon may be cancelled and delivered up to him, that he may have judgment in his favor against plaintiff's demand, and for costs of suit; that your honor would afford all other and further relief, which justice and the nature of the case may require, and that this cause may be tried by a jury. As in duty bound, &c.

Signed, I. T. PRESTON, *Atty. for dft.*

Filed April 14th, 1840.

D. N. HENNEN, *Clk.*
By F. A. FOYGNET, *Dpty. clk.*

Affidavit.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } 9th circuit, U. S. Court.

Samuel Anderson, the defendant, being duly sworn, doth depose

and say, that the testimony of witnesses residing in Madison parish are material for his defence in this suit, and that he cannot safely go to trial without the benefit of their testimony; among said witnesses are John B. Bemiss, esq., George W. Groves; and this affidavit is not made for delay, but only to obtain justice.

Signed, SAML. ANDERSON.

Sworn to and subscribed at New Orleans, this 11th day of April, 1840, before me,

D. N. HENNEN, *Clk.*
By F. A. FOYGNET, *Dy. clk.*

Filed July 15th, 1840.

D. N. HENNEN, *Clk.*
By FRANCIS A. FOYGNET, *Dy. clerk.*

Petition in No. 606.

To the honorable the judges of the circuit court of the United States for the ninth judicial circuit, holding sessions at the city of New Orleans, in and for the eastern district of Louisiana.

The petition of Clayton Tiffin, who avers that he is a citizen of the State of Missouri, residing in Saint Louis, in said State, respectfully shows, that Samuel Anderson, who is a citizen of the State of Louisiana, residing in the parish of Madison in said State, and within the jurisdiction of this honorable court; and that the said Samuel Anderson is justly indebted unto your petitioner, in solido, in the sum of three thousand seven hundred and seventy-five dollars, with interest thereon at the rate of five per cent. per annum, the legal interest in the State of Louisiana where the debt sued for was contracted, from the day of judicial demand until paid, and dollars cost of protest, for this: That petitioner is holder and owner of a promissory note, drawn by J. M. Perry and Saml. Anderson, and either of them, dated 11th April, 1838, for $3,775, payable on the first day of March, eighteen hundred and forty, to the order of petitioner, as more fully appears by reference to said note hereto annexed, and made part of this petition. Petitioner alleges further, that the said Samuel Anderson, though amicably requested, has neglected to pay the amount or any part thereof, for which he is indebted as aforesaid, in solido. Wherefore petitioner prays that the said Samuel Anderson be cited to appear and answer this petition, and after due proceedings be condemned, in solido, to pay petitioner the aforesaid sum of three thousand seven hundred and seventy-five dollars, with interest at the rate of 5 per cent. per annum until paid, and costs of suit, and for general relief.

And, as in duty bound, &c.

Signed, PEYTON & SMITH,
Attorneys for petitioner.

Note annexed.

$3,775 00.

On the first day of March, eighteen hundred and forty, we, or

either of us, promise to pay to the order of Clayton Tiffin, three thousand seven hundred and seventy-five dollars without defalcation, and for value received, this 11th day of April, 1838.

Signed, J. M. PERRY.
" SAM'L ANDERSON.

Filed March 6th, '40. D. N. HENNEN, *Clk.*
DE WINT, *D'y clk.*

Citation.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 606.

To Mr. Samuel Anderson.

You are hereby commanded to summon Samuel Anderson, and you, Samuel Anderson, are hereby cited to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this sixth [L. S.] day of March, in the year of our Lord one thousand eight hundred and forty, and the independence of the United States of America the year.

Signed, DUNCAN N. HENNEN, *Clk.*
F. DE WINT, *D'y clerk.*

Marshal's return.

Received, Wednesday the 1st day of April, 1840, and on Wednesday the 8th day of the same month (April,) I served a copy of the within citation, together with a certified copy of the plaintiff's petition, on the defendant Samuel Anderson, by leaving the same at his domicil, he being absent, in the [?] of Nelson F. Shelton, a free person apparently above the age of fourteen years, living in the house of the within named defendant, in the parish of Madison, Louisiana, four hundred and sixteen miles from New Orleans.

Signed, M. MARIGNY, *U. S. Marshal.*
By JOHN N. DONOHUE, *D'y U. S. Marshal.*

Default.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 606.

On application of B. Peyton, esq'r, of counsel for the plaintiff, and it appearing that process had been duly served, and no answer filed within the legal delay, judgment by default is hereby entered in this case.

Entry of Dec'r 23d, 1840.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 606.

On motion of J. C. Larue, esq'r, and by consent of the plaintiff's counsel, judgment by default is set aside, and he is permitted to file an answer.

To the honorable circuit court of the United States for the 9th circuit, in and for the eastern district of Louisiana, the answer of Samuel Anderson, to the petition filed in this honorable court against him by Clayton Tiffin, respectfully shews:

That it is true he signed the note in plaintiff's petition described, as the security of John M. Perry; but he alleges that the said note, and two others of the same amount, were given for the interest of the said Tiffin in a tract of land in the parish of Madison.

Your petitioner alleges, that at the time it was agreed and understood that as soon as your petitioner should give another note, secured by mortgage on the land of the aggregate amount of the said three notes, including the one sued upon, should be cancelled and given up. Now your respondent shews, that shortly afterwards he did give to John M. Perry, who was agent or att'y in fact for the plaintiff, another note in consideration of the purchase of said land, for the amount of about thirteen thousand dollars, thus covering the three existing notes, and which note of thirteen thousand dollars your respondent gave, and secured by mortgage on the land and negroes purchased, and which said note was afterwards transferred to the said Clayton Tiffin in exchange and extinction of the note now sued upon, and which your respondent no longer owes. Your respondent therefore respectfully prays, that the note sued upon may be cancelled and delivered up to him; that he may have judgment in his favor against plaintiff's demand and for costs of suit; that your honor would afford all other and further relief which justice, equity, and the nature of his case may require. And that this cause may be tried by a jury. As in duty bound, &c.

Signed, I. T. PRESTON, *Att'y for respondent.*

Filed December 23d, 1840.

Signed, DUNCAN N. HENNEN, *Clk.*

Entry of 11th January, 1841.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 577 & 606.

It is ordered by consent of parties, by their counsel here present in court, that these causes be consolidated; that both be tried on the evidence taken in each; that the jury be waived in both cases, and the testimony be reduced by the parties to writing to serve on the trial of the cause; and that this cause be tried on Tuesday next.

Entry of January 19th, 1841.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON, } No. 606.

This cause, which was set for this day, was by consent of parties continued until to-morrow.

Entry of January 20th, 1841.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } No. 606.

By consent of counsel, this cause is continued until to-morrow, for want of time.

Entry of April 14th, 1841.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } No 577.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } No. 606.

These causes came on this day for trial; Peyton and Smith appearing for the plaintiff, and Isaac T. Preston, esq'r., appearing for the defendant; the trial by jury being waived by consent, after hearing the evidence and arguments of counsel, the court took time to consider thereon.

Judgment.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } Nos. 577 & 606.

The court having maturally considered these cases, now order, adjudge and decree, that judgment be entered in favor of the plaintiff, Clayton Tiffin, and against the defendant, Samuel Anderson, for the sum of $ eight thousand two hundred and ninety dollars, with interest of five per centum per annum upon $4,515 thereof, from the 17th February, 1840; and upon $3,775 thereof, from the 6th of March, 1840, at the rate of five per centum per annum, till paid, and for costs of suit.

Judgment entered 17th day of April, 1841; judgment signed 24th day of April, 1841.

(Signed) JOHN McKINLEY, *Presiding Judge.*

Documentary evidence.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON.

9th circuit court of the United States, for the eastern district of Louisiana.

Interrogatories to John B. Bemiss, esq'r., George M. Groves and other witnesses, residing in Madison parish, to be qualified and examined, under the annexed commission.

1st. Look at the following copy of a note; have you any knowledge of said note, and for what was it given, and for what consideration and purposes, and why did defendant sign said note.

2nd. Have you any knowledge of an agreement between plaintiff and defendant in relation to said note, and others of same amount, especially as to the giving of a large mortgage note in lieu of them; state what the agreement was, what note was given in lieu of the note sued upon, and what became of the said mortgage note, and who is its owner at this time?

3rd. State every thing you know in relation to all of said notes, and the agreements and transactions of the parties in relation thereto; state, also, every thing you have heard the plaintiff say in relation to the extinction of the note sued upon; and every thing else you may know in relation to the matters in controversy, as fully as if particularly interrogated thereto.

(Signed) ISAAC T. PRESTON, *Att'y for defendant.*

Cross interrogatories to be propounded to said witnesses.

1st. If you answer the 1st int. affirmative[ly,] state how you know the fact; from what source you derived your information, both as to the consideration of the note, and the motive which induced def't to sign said note.

2nd. Plaintiff objects to witness stating any thing about the con*tence* of within agreements and other papers; expressly reserves that objection, and propounds the following cross interrogatories:

If you answer int. 2nd in the affirmative, state where said agreement was made, and in whose presence, and w[h]ether you were specially called to witness the same; state w[h]ether there was any written agreement or *no* memorandum in writing made at the time, in relation thereto, or at any other time.

Int. 3rd. If you say any other note or notes were given, in lieu of this particular note sued on, state how you know it was this note.

4th. Do you know w[h]ether it was agreed that this note was to be surrendered, or was the other note or notes given as collateral security for the payment of this note and others?

5th. Why was not this note given up and cancelled, if the others were given in its stead; do you know who was the holder of this note, at the time of said agreement; did you see it at that time? If you know any thing more in favor of pl'tff, state it fully and particularly.

(Signed) BALIE PEYTON, *for pl'tiff.*

I am willing that the foregoing interrogatories and cross interrogatories, shall be copied and annexed to the commission in the other case of same parties in the same court, and opposed in evidence, waiving affidavits, but subject to all other exception. July 17th, 1840.

(Signed) BALIE PEYTON, *for pl'tiff.*

Filed 14th April, 1840. HENNEN, *Clerk.*

Answers to interrogatories by Bemiss.

CLAY. TIFFIN,
vs.
SAMUEL ANDERSON.

STATE OF LOUISIANA, *parish of Madison:*

Answers to interrogatories, under commission issued from the circuit court of the United States, for the 9th judicial circuit, holding session in and for the eastern district of Louisiana, in the case of Clayton Tiffin, plaintiff, vs. Samuel Anderson, defendant.

Defendant's interrogatories.

John B. Bemiss being duly sworn, says in answer to interrogatory 1st. That he has *never seen the note* sued on; that he has no knowledge of what said note was given for, except from observations made by the plaintiff; that plaintiff said that he held two notes, amounting together to some nine or ten thousand dollars, drawn by John M. Perry and Sam'l Anderson; that said notes were given to evidence and secure the payment of a certain indebtedness of John M. Perry to Clayton Tiffin, on which Samuel Anderson was a security.

Answer to interrogatory 2nd. Witness says, that he understood by the observations of plaintiff upon the subject of these notes, that after the execution of them, John M. Perry sold to Samuel Anderson a plantation and negroes for a large sum; that one of the notes arising out of said sale was to be, or was, transferred to plaintiff, and that John M. Perry's indebtedness to plaintiff was thereby discharged; specially referring to the above mentioned notes, that said note that was, or was to be, transferred to plaintiff, was about the sum of thirteen thousand dollars, and was secured by mortgage on said plantation and slaves sold aforesaid to the defendant; that witness is satisfied that the notes referred to in conversation with plaintiff as stated above, are the same sued on, because plaintiff proposed to give an order to defendant, or to one of

defendant's friends, in case he should not see defendant in person, for said notes, signed by John M. Perry and Samuel Anderson, which were then in the hands of an attorney for collection, stating that they were extinguished in the manner aforesaid; that the thirteen thousand dollars note above referred to was seized by the marshal upon an execution issuing from the circuit court of the United States aforesaid, at the suit of Mosely vs. Lilbourn P. Perry et als., and was sold, together with the other note of the same arising out of the sale of said plantation and negroes, when Samuel Anderson, defendant, became the purchaser of said notes, for said sum of thirteen thousand dollars, being endorsed to plaintiff, by John M. Perry, attorney in fact of Lilbourn P. Perry; that said note is now on file in the *in the* district court clerk's office for the parish of Madison, and is claimed by Samuel Anderson, defendant, under the aforesaid purchase.

Answer to interrogatory 3rd. Witness says that he has stated all the material facts, which he recollects, in answer to interrogatories 1st and 2nd.

Answer to cross interrogatorys.

Interrogatory 1st. Witness derived all his information relative to the note sued on from plaintiff.

Interrogatory 2nd. That the conversation, in which he received his information relative to said note, took place in the latter part of November, or early in the month of December, A. D. 1839; that witness recollects no one being present except plaintiff, defendant, George W. Grove and witness, although it is quite likely others may have been present during some portion of the conversation relative to said notes, as there was a considerable collection of people present at Mr. Anderson's, where said conversation took place; witness was not called upon specially to take notice of said conversation, but was acting in relation to the business as defendant's attorney, and being particularly interested as attorney, took particular notice of what passed upon the subject; that *that* witness knows of no memorandum in writing, being made or passed then, or at any other time, relative to the note sued on.

Answer to interrogatory 3rd. Witness says, his answer thereto will be found in his answer to defendant's 2nd interrogatory.

Answer to 4th interrogatory. Witness states, that it was his understanding that said notes were to be surrendered, and that the thirteen thousand dollar note was intended as payment and discharge of said notes, and not as collateral security for their payment.

Answer to interrogatory 5th. Witness says, that plaintiff stated that the notes, signed by John M. Perry and Samuel Anderson, were in John M. Perry's hands, to be given up to Samuel Anderson upon the execution of the thirteen thousand dollar note and mortgage securing the same, and that John M. Perry had without

his, plaintiff's, authority, placed them in the hands of an attorney for collection, for which act plaintiff expressed himself as indignant at said John M. Perry. Witness knows nothing more in favor of plaintiff.

(Signed) JOHN B. BEMISS.

Sworn to and subscribed before me, this the 13th day of November, A. D. 1840.

(Signed) E. R. J. ALLIMOTT,

Justice of the peace for the parish of Madison.

STATE OF LOUISIANA, *parish of Madison:*

I do hereby certify, [that] the foregoing four pages contain all the answers of John B. Bemiss, to the interrogatories propounded (by both plaintiff and defendant) to said John B. Bemiss, under a commission which issued from the circuit court of the United States, for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana; that said answers were given before me, and sworn to and subscribed in my presence, on the 13th day of November, A. D. 1840.

Given under my hand and seal, this 13th day of November, A. D. 1840.

(Signed) E. R. J. ALLIMOTD, [SEAL.]

Justice of the peace in and for the parish of Madison, La.

Answers to interrogatories propounded to Groves.

CLAYTON TIFFIN, }
vs. }
SAMUEL ANDERSON. }

STATE OF LOUISIANA, *parish of Madison:*

Answers to interrogatories, under commission issued from the circuit court of the United States for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana, in the case of Clayton Tiffin vs. Samuel Anderson, def't.

Defendant's interrogatories.

George W. Groves being duly sworn, says in answer to interrogatory 1st, that he has never seen the note sued on, and from his own knowledge does not know for what said note was given, but was informed by plaintiff and defendant both, that two or three such notes had been signed by John M. Perry and Samuel Anderson, and delivered to plaintiff; that plaintiff informed him that while he owned an interest in a certain plantation on the Mississippi river, in partnership with Lilburn P. Perry, that plaintiff had advanced some sixteen thousand dollars on account of said plantation, a very small part of which had ever been refunded from said plantation or otherwise; that plaintiff and Perry subsequently sold said plantation to defendant; that the sale at the time it was made was not entirely closed, the notes were not given; that the note

sued on was given by arrangement of John M. Perry, plaintiff and defendant, as an evidence of the indebtedness of the plantation to plaintiff, for advances while he owned an interest therein.

Answer to interrogatory 2nd. Witness says, that plaintiff informed him that there was an agreement between himself and defendant, and John M. Perry, that John M. Perry as agent for Lilburn P. Perry and plaintiff, was to close said sale with defendant, and take said notes with a mortgage on the property sold to defendant, to secure the purchase money; that one of said notes, amounting to upwards of thirteen thousand dollars, was to have been made payable to plaintiff's order; that said John M. Perry had not acted in good faith in having said notes executed according to the understanding between them; that the plaintiff had put the notes drawn by said John M. Perry and Samuel Anderson, in the hands of John M. Perry, to be delivered up to said Samuel Anderson, so soon as said thirteen thousand dollar note should be executed according to understanding; but the notes secured by mortgage were all made payable to the order of Lilburn P. Perry, in place of one being made payable to the order of plaintiff, according to understanding; plaintiff complained of John M. Perry for having placed the [notes] drawn by said John M. Perry, and said Samuel Anderson, in the hands of an attorney for collection, in place of carrying out the contract according to agreement, and delivering them up to said Samuel Anderson; that he, witness, says he cannot answer further as to the matters contained in the second interrogatory.

Answer to interrogatory 3rd. Witness says that all he knows in relation to the 3rd interrogatory was a conversation between the plaintiff and defendant, which took place some time in November, A. D. 1839, in which the plaintiff proposed to defendant to receive, in part payment of the thirteen thousand dollar note, fifty bales of cotton, or twenty-five hundred dollars, which was to have been credited on [said] thirteen thousand dollar note, (said note not being then due,) and to extend the time for the payment of a part of the balance of said note when due, and to deliver up the notes given by said John M. Perry and said Samuel Anderson to said Samuel Anderson, which witness understood, at the time, to be a settlement between plaintiff and defendant; but witness understood that said fifty bales of cotton, nor the twenty-five hundred dollars, was not paid because the thirteen thousand dollars note, together with other notes secured by mortgage, were levied on by the marshal as the property of Lilburn P. Perry.

Answers to cross-interrogatories.

In answer to interrogatory 1st. Witness states that his answer will be found in the answer to defendant's 1st interrogatory.

Answer to interrogatory 2nd. Witness states that said agreement was made at Samuel Anderson's, in presence of John B. Bemiss,

plaintiff, defendant, and witness, and probably others, as there were a number of persons at the place at the time the agreement was made. Witness says he does not recollect of being called on specially to witness said agreement; that plaintiff stayed at the house of witness for several days during his stay in this country, and wanted witness to act as agent in that business; and frequently talked the matter over concerning the business, between himself, John M. Perry, and defendant, and [of] business in general. Witness does not recollect of any memorandum in writing being made in relation to the business above stated.

Answer to interrogatory 3rd. Witness says that plaintiff said to him, on his return from New Orleans, that defendant had not forwarded the cotton or the money to him, plaintiff, at New Orleans, and that said thirteen thousand dollar note had been levied upon as the property of Lilburn P. Perry; that he would, therefore, bring suit on the notes given by said John M. Perry and said Samuel Anderson against said Samuel Anderson; that he would forward them to New Orleans, and place them in the hands of Balie Peyton for collection, which induces witness to believe this to be one of said notes.

Answer to interrogatory 4th. Witness says that he understood that the notes given by John M. Perry and Samuel Anderson were to be surrendered as soon as the terms of the sale were complied with, and the mortgage notes given to John M. Perry, the agent of Lilburn P. Perry, and plaintiff; one of which, amounting to thirteen thousand dollars and upwards, was to be plaintiff's property, in full liquidation of the notes held by plaintiff against said John M. Perry and defendant, and not as collateral security.

Answer to interrogatory 5th. Witness says that plaintiff informed him that these notes were placed in the hands of John M. Perry, to be given up to defendant, or cancelled, as soon as defendant should execute the mortgage notes according to the terms of sale; and the reason the notes were not given up to defendant, was because the said John M. Perry had not acted in good faith in closing the sale according to the agreement; that instead of taking one of the mortgage notes in the name of plaintiff, or payable to order of plaintiff, and giving up the notes given by John M. Perry and Samuel Anderson to defendant, the said John M. Perry took all said mortgage notes payable to the order of Lilburn P. Perry, and placed the notes given to plaintiff by John M. Perry and Samuel Anderson in the hands of an attorney for collection, contrary to his wish and instructions, from which witness inferred that the notes were the property of the plaintiff at the time plaintiff talked over the agreement with witness in November, A. D. 1839. Witness states that he did not see the note or notes at this, nor any other time; that he knows nothing more in favor of plaintiff.

Signed, GEO. W. GROVES.

Sworn to and subscribed before me, this the 13th day of November, 1840.

Signed, E. R. J. ALLMOTD,
Justice of the peace for the parish of Madison.

STATE OF LOUISIANA, *parish of Madison:*

I do hereby certify, that the foregoing five pages contain all the answers of George W. Grove, to the interrogatories propounded by both plaintiff and defendant to said George W. Groves, under a commission which issued from the circuit court of the United States for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana; that said answers were given before me, and sworn to and subscribed in my presence, on the 13th day of November, A. D. 1840.

Given under my hand and seal, this 13th day of November, A. D. 1840.

Signed, E. R. J. ALLMOTD,
Justice of the peace in and for the parish of Madison.

Filed April 14th, 1841.

HENNEN, *Clerk.*

Commission under which the above deposition were taken.

Circuit court of the United States for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana, to any judge or justice of the peace in the parish of Madison.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call, and cause to come before you certain witnesses, and them duly examine, on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein Clayton Tiffin is plaintiff, and Samuel Anderson is defendant, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this 15th day of July, anno domini 1840, and the [L. S.] sixty-fifth year of the independence of the United States of America.

Signed, D. N. HENNEN, *Clerk.*
By FRANCIS A. FOYGNET,
Dy. clerk.

Depositions.

CLAYTON TIFFIN
vs.
SAMUEL ANDERSON. } Circuit court of U. States.

Calvin Luther Perry, being sworn, deposes, that he is acquainted

with the parties to this suit; that, on the 10th day of April, 1838, witness was at the house of John M. Perry, in the parish of Madison in this State, and then and there saw the defendant sign three notes, two of which are those now sued on. He signed as the surety of John M. Perry, who also signed said notes. The notes were given for a sum of money advanced by said Tiffin, as endorser of said J. M. Perry, for a sum of money lent by said Tiffin to John M. Perry, and for some stock sold by Clayton Tiffin to John M. Perry; the third of said notes is not yet due. The three notes amounted to about eleven thousand dollars, or it may be more; the three notes were then handed to Clayton Tiffin. Witness does not know that said notes, or any one of them, have ever been paid or arranged in any way; neither at the time said notes were given, nor at any time since, was there any agreement, so far as deponent knows, to give up said notes, by giving other notes or otherwise. These notes were all given previous to the closing of the contract for the sale of Tiffin and L. P. Perry's plantation to said Anderson; these notes had nothing at all to do with said sale. That sale took place afterwards, and on the same day; the sale, as then arranged between said Tiffin and L. P. Perry and said Anderson, was merely a preliminary arrangement. The deed of sale was passed that day, but the price was not then agreed on, and the whole was to be the subject of a future arrangement. The defendant then held a note signed by John M. & L. P. Perry, for about $12,000; which note was afterwards taken in part pay for said plantation. About ten months afterwards, that is, after 12th April, 1838, the arrangement was completed; the plantation was paid for by said note of about $12,000, by a note signed by Hugh R. Austin, and others, for about $18,000, and by three notes of said Anderson, secured by mortgage on said plantation, for the balance of said price; each of which three notes [were] for about $13,000. On the 12th of April, 1838, there were no other notes given by John M. Perry and said defendant, but the two now sued on, and the third of said notes first described. Deponent saw no others given; and had any other notes been given, deponent thinks he would have known it. Deponent was consulted in that day by both parties in relation to all their affairs, and nothing was said about any other notes. The plaintiff, defendant, John M. Perry, and deponent, were in the room when said three notes, two of which are now sued on, were given; neither George W. Groves or J. B. Bemiss was at the house of John M. Perry on said 10th April, 1838. Mr. Stockton and Judge Downes were at the house of John M. Perry on that day. The three notes, of which two are now sued on, were given without a moment's hesitation by John M. Perry and defendant. The plaintiff and L. P. Perry could not agree among themselves on that day how the plantation, which they owned together, should be disposed of; so it was agreed by all parties, that the sale should be subject to a future arrangement. Deponent was not present when the sale was finally

concluded about ten months after 10th April, 1838, though deponent was in the neighborhood. The day after said sale was completed, deponent was told by said defendant that he had the day before bought said plantation. The plantation was taken possession of by defendant, as his property, during the absence of John M. Perry; deponent and defendant were then very intimate, and in repeated conversations after said sale was completed, defendant informed deponent of the terms in which he had completed the sale. Deponent has since received from defendant's clerk the note for about $12,000, and delivered it to John M. Perry for him and L. P. Perry; the said note for $18,000 is still out and unpaid. The two notes now sued on have never been in any way connected with said plantation, so far as deponent knows; he knows, from repeated conversations with both plaintiff and defendant, that they formed no part of the consideration of, nor had they any thing to do with, said sale; the consideration of which was complete, without reference to said notes now sued on. Deponent had charge of the plantation in the summer of 1839, during the absence of defendant, and at his request. Deponent has never heard defendant speak of the notes sued on since they were given; that if said notes had ever been in any manner connected with the sale of said plantation, deponent thinks he would have known it. John M. Perry is the father of deponent, and when said notes were sued on—were signed—nothing was going [on] but deponent knew of it. John M. Perry still considers himself liable on the notes now sued on. John M. Perry and defendant were in the habit of signing for each other. John M. Perry has authority from L. P. Perry to give credit to defendant for the amount of liability on account of the notes now sued on, or otherwise upon the notes of $18,000 as settlement with Anderson; said plaintiff has never sold any other interest in a plantation to defendant, except as above described, as far as witness knows; witness is satisfied it is the only place said Tiffin has ever sold to said Anderson in Louisiana. Deponent has examined the depositions of G. W. Groves and J. B. Bemiss, and is satisfied that the conversation to which they testify had no reference to the notes now sued on, but only to the notes for the plantation from September to November, 1839. Deponent and defendant live in the same house, and no person has had a better opportunity than deponent of knowing the whole history of the notes now sued on, as well as the history of the sale of the plantation. The defendant and deponent were intimate, and often communicated with each other as to their business affairs. That said plaintiff came to this State a few days after the notes sued on were signed; left the State a few days after said notes were signed, and did not return to this State until November, 1839. He left this State in January, 1840, and has not been here since. That John M. Perry has never, as deponent is almost positive, had any authority to arrange for cancel, or give up the notes sued on. The only authority which John M.

Perry has had was from L. P. Perry, and related to L. P. Perry's business generally; L. P. Perry is a brother of deponent; John M. Perry has never acted, so far as deponent [knows,] as the agent of said plaintiff. The loaned money, which formed part of the consideration of the notes now sued on, had been loaned by the plaintiff to John M. Perry at different times previous to 10th April, 1838, from August, 1837; the greater part of it was loaned in August, 1837. The money paid by plaintiff for John M. Perry was paid in 1837; it was paid on a draft then drawn at St. Louis by John M. Perry, endorsed for his accommodation by the plaintiff, and taken up by the plaintiff in 1837, on its coming back to St. Louis protested. The stock which formed the balance of the consideration was sold by plaintiff to John M. Perry for about $2,700; it was stock which the plaintiff had, in 1837, sent down to L. P. Perry to sell.

Cross examined.

Mr. Anderson signed for his father some notes in the Brandon Bank; the amount he does not recollect; he does not recollect any other except the two sued on, and another note that [is] not yet due. His father became joint drawer with Mr. Anderson of notes to the amount of forty-five to fifty-five thousand dollars, payable to or for the benefit of Moore and Alexander, of Vicksburg, for a stock of goods, and purchased by Anderson from them, and most of which remain cancelled. Yet he does not recollect any others. It was a matter of arrangement between Dr. Tiffin and Mr. L. P. Perry; that Tiffin got none of the notes given by Anderson for the plantation; the arrangement he does not know the terms of; as long as Tiffin held the plantation, he owned one half of it. He got no part of the price given by Anderson. Tiffin had paid nothing for the plantation. He had gone into the purchase to aid his son-in-law L. P. Perry.

J. M. Perry, witness in this case, is deponent's father, L. P. Perry, his brother, and Dr. Tiffin married deponent's sister, who is now dead. L. P. Perry had before married Dr. Tiffin's daughter by a former marriage. Deponent saw the endorsement of his father for L. P. Perry of one of the notes given by Anderson for the plantation to Dr. Tiffin, which was to pay Tiffin money which L. P. Perry was indebted to him; but deponent does not know on what account.

Dr. Tiffin sent the stock mentioned to Dr. Perry to be sold, and it was sold to different persons. Some of [the] stock that he sent down was put on the plantation; a few horses were left there; he presumes the price of that part of the stock forms a part of the consideration of the amount and endorsement to Dr. Tiffin of the thirteen thousand dollar note given by Anderson for the plantation, and the balance of the stock was sold to John M. Perry by Tiffin for $2,700. Dr. Tiffin was in the habit of advancing money and means to Dr. Perry, his son-in-law, and the endorsement of said $13,000 note might, as deponent believes, [have] been on that account.

Re-examined by pltff. attos. Says that deft. purchased at a marshal's sale L. P. Perry's interest in the three notes of $13,000 each of said Anderson, which were seized and sold under a fi. fa. in the case of Mosely and Bouldin vs. L. P. Perry in this court; but he thinks no actual delivery of the notes was made, which are the same notes before mentioned. The consideration or amount given by said Anderson for said notes was about five thousand dollars, he believes, though the marshal's return will show. On being shown paper marked A, says he saw it executed by said Anderson, and witness subscribed same as a witness; and that note also shown him by Bailie Peyton, marked B, for $3,775, is one of the three notes executed by J. M. Perry and Samuel Anderson to pltff., being the last one not yet due.

Signed, CALVIN L. PERRY.

Sworn to and subscribed before me, this 17th February, 1841.

Signed, DUNCAN N. HENNEN, *Clk.*

Depositions.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } In 2 cases.

Circuit court U. States, 9th circuit, eastern district of Louisiana.

Thomas B. Scott, a witness for the defendant in the above case, being duly sworn, qualified and examined by consent in the above case, doth depose and say, that he is sheriff of the parish of Madison. Deponent is acquainted with John M. Perry. He knows that said Perry, in the fall of 1839, acted in that parish as the agent of C. Tiffin, the plaintiff; deponent knows that Perry caused an attachment suit to be issued against the defendant on notes to the amount of thirty or forty thousand dollars; that the plaintiff, after the attachment, complained to witness on account of Perry's taking those steps, that he was interested in the notes, and did not authorize such a suit. Tiffin and Perry had a writing with Anderson on the subject of stopping the attachment, and returning it without service. And finally, Perry gave orders to stop the attachment, and as deponent thought partly through the influence of Tiffin, who appeared as much interested in it as any of them.

Cross examined.

Witness does not of his own knowledge know of John M. Perry having any thing to do with said suit until after Tiffin came there, and then John M. Perry, as Tiffin's agent, gave witness instructions to stay proceedings on the attachment. The only knowledge witness has that John M. Perry was the agent of said Tiffin, was derived from said written instructions. In nothing else did witness

ever hear said Tiffin say that said Perry was his agent, nor said Perry say that he was the agent of said Tiffin.

Signed, THOS. B. SCOTT.
Signed, DUNCAN N. HENNEN, *Clk.*
By F. A. FOYGNET, *Dy. Clk.*

Depositions.

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } Circuit court, U. S.

John M. Perry, a witness for said plaintiff, being sworn, deposes that he has examined the notes sued in both these suits, now consolidated into one, and recognizes his signature to both said notes. Said two notes were given for a debt due by deponent to said Tiffin; about $2,700 of which was for stock sold by said Tiffin to this deponent; the balance was for money which said Tiffin had paid for deponent, being about $6,000, the amount of a draft and damages paid by said Tiffin for deponent; also, another draft paid to Martin Thomas, together with some money, amount about $4,600, in all about $13,300; which same was divided into three notes, and made payable one, two and three years, (I think interest was added upon the $13,300, according to the time each note had to run, of this I am not certain.) Two of the notes are now sued on; the last note becomes due some time in March, 1841. At the time the three notes were given, there was no understanding that *there* were to be given up by Anderson's signing another note, in amount sufficient to cover the three notes spoken of. No such arrangement was ever mentioned in deponent's presence. At the time Anderson and deponent were in the habit of signing for each other freely, this, like all others, was done entirely unconditionally. At the time that Tiffin and L. P. Perry made the deed to Anderson for the plantation and negroes, some preliminary arrangements *to make*, in consequence of which, the whole estate was left in the possession of deponent, as the agent of L. P. Perry, to close the business of deponent and L. P. Perry finally in such manner as deponent thought best; Anderson and deponent had several conversations on the subject. And about the middle of July, 1839, deponent closed the business with Anderson, and took from him a mortgage on three notes of about $13,000 each, a note on Austin and others for about $18,000, deponent and L. P. Perry's notes to Anderson for $12,000. At the time the business was closed as above, deponent purchased of Anderson one-third of the estate at the price he, Anderson had given for it, and that this deponent was still to continue to manage and control the estate as usual, (this control was a verbal one,) which was to be carried into effect upon deponent's return from the upper country. Deponent before leaving for the upper country in July, 1839, employed an overseer, and gave him written instructions how to manage the estate until deponent's return. Deponent

returned from St. Louis, Mo., about the 1st of Oct., 1839, with provisions, &c., for the use of the plantation. In a few days after deponent's return, he proposed to Anderson to close and confirm the contract he had made, which Anderson refused to do, and forcibly held possession, which he obtained in deponent's absence. One-third of the then growing crop of about 200 bales of cotton, crop of corn, &c., belonged to deponent by contract—deponent had been at nearly all the expense of making the crop. In Nov., 1839, deponent and Anderson commenced a settlement, and did settle as far as their cash account went. Anderson fell indebted to deponent for cash advanced for the use of the plantation about $1,800, which he now holds, together with his contract with deponent, on account of his liability to Tiffin on the three notes spoken of, two of which *is* now sued on. Tiffin left the State in the spring of 1838, and did not return until Nov. 1839. The *three* thirteen thousand dollar note was made payable to L. P. Perry alone, and not to Tiffin. Deponent does not believe that Anderson ever gave Tiffin any other note or notes, except the three spoken of as deponent's security; he has heard Tiffin say so; and if it had been done, deponent thinks he would have known it, as he has had every opportunity to do so.

Cross examined.

One of the 13,000 notes was endorsed by deponent to Clayton Tiffin, which he done as agent of L. P. Perry. This was done because deponent knew the plantation belonged jointly to Tiffin and L. P. Perry, and he knew also that Tiffin and L. P. Perry had a settlement to make. Having no agency to act for Tiffin, deponent closed the whole matter in relation to the transaction in the name and as the agent of L. P. Perry. He does not know that the notes given by him, with Anderson as security, to Tiffin, were given with a view to close up his business in this country. Tiffin had other business to close in Miss., which he thinks is not yet done. L. P. Perry lived on the plantation as joint owner with deponent up to the time it was sold to Tiffin and L. P. Perry, and until it was sold to Anderson by Tiffin and L. P. Perry, during which time deponent had the management of it, and after it was sold to Anderson, until some time in July, 1839. The note of deponent and L. P. Perry to Anderson for $12,000, which he gave up as part of the price of the plantation, was given by them to Anderson for negroes, which were worked on the plantation, and with the exception of one was sold to Anderson, amongst others, with the plantation. He once had an interest in the plantation and negroes, but had sold out to Tiffin & Perry. It was then thought that it would take the plantation to pay the debts which L. P. Perry was bound for with deponent. The money deponent got of Tiffin was applied to the payment of goods he had purchased at the north. When Tiffin and Perry owned the plantation, Tiffin sent down

about $3,700 worth of stock, consisting of horses and mules, to L. P. Perry, to sell; he sold some to Barret Lerey, to John F. Bradnox, to Aaron Lilly and Hopkins; the balance of the stock deponent purchased from Tiffin, amounting to about $2,700; a part of which deponent sold, and applied the notes he took to pay for goods he had purchased at the north; a part of the stock was on the plantation in the possession of Anderson in July, 1839. Deponent thinks there's no stock of any kind mentioned in the conveyance from Tiffin and Perry to Anderson. Deponent brought a suit of attachment on the three thirteen thousand dollar notes against Anderson; gave Henry Lewis and Thomas W. Watts security; made affidavit and filed the petition, with the notes; they are in the office now at the parish of Madison. Deponent made the affidavit himself, and had the best of reasons to believe that Anderson would run off the property. His abandonment of his contract with deponent, and deponent knowing his reckless condition, and from the fact that he had a short time previous ran sixteen or 18 negroes from Miss. to this State to avoid the payment of his debts there, which negroes he is now sued for in the parish of Madison, except some five or six he sent up the river and sold, which his creditors are now in pursuit of. The attachment suit was brought as the agent of L. P. Perry. Deponent has not seen the bonds since the attachment suit was brought, and does not know that one of the notes was sued for the benefit of Tiffin. Deponent endorsed one of the $13,000 to Tiffin as the agent of L. P. Perry, bnt does not now recollect how the suit was brought.

On being shewn the note marked B, in the possession of Balie Peyton, says, it is his, witness, and said Anderson's signature, that said note is the last of the three before spoken of as having been given by witness and defendant to plaintiff.

Signed, J. M. PERRY.

Sworn to and subscribed before me, this 17 February, 1841.

Signed, D. N. HENNEN, *Clerk.*

Bond annexed.

Know all men by these presents, that Clayton Tiffin and Lilburn P. Perry have this day, by deed bearing date 10th April, 1838, bargained, sold, conveyed and confirmed, unto the undersigned Samuel Anderson, a certain tract of land in the parish of Madison, and State of Louisiana, in the Western district of Orleans territory, and known as section 9, township 16, of range 15 east, for a more particular description of which reference is hereby made to said deed; and know ye, that I, the undersigned, Samuel Anderson, do hereby release, remise, and forever renounce unto the said Tiffin and and every claim or claims which have existed, or may hereafter exist, against them or either of them, for any guaranty or warranty specified in the said deed, for a full and perfect title to said tract of land; and I do hereby bind myself, my heirs and assigns, in the

final sum of seventy-five thousand dollars, to abide by the above agreement.

Given under my hand and seal, this 10th day of April, 1838.

SAMUEL ANDERSON, [SEAL.]

Witness—CALVIN L. PERRY.

STATE OF LOUISIANA, *parish of Madison:*

Before me, Richard Charles Downes, parish judge, in and for said parish of Madison, personally appeared Calvin L. Perry, of this parish, whose name is subscribed to the within instrument as a witness, who being sworn on *on* the holy bible, deposed that he was present and saw Samuel Anderson subscribe the within act or instrument on the*y* day therein written, and that he subscribed the same in attestation thereof.

Signed, CALVIN L. PERRY.

Sworn to and subscribed, on this 30th day of November, A. D. 1840, before me, signed RICH'D CHAS. DOWNES,

Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

I hereby certify, that the foregoing and within is duly recorded in my office in conventional mortgage record book A, page 145, this 30th day of November, A. D. 1840.

Attest, RICH'D CHAS. DOWNES,

Parish Judge.

Mortgage.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered that on this ninth day of July, A. D. eighteen hundred and thirty-nine, before me, Richard Charles Downes, parish judge and ex officio notary public, in and for said State and parish, in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel Anderson, a resident of Hinds county, in the State of Mississippi, who said and declared, that whereas he stands justly indebted to Lilburn P. Perry, of the city of St. Louis, State of Missouri, in the full sum of forty thousand dollars, and an order to secure the payment of the same, he has made and executed his three several promissory notes, for the sum of thirteen thousand three hundred and thirty-three dollars each, all which notes are dated the 1st day of March, 1839, and payable to Lilburn P. Perry; the first of which is payable on or before the first day of January, A. D. 1842; the second, on or before the first day of January, A. D. 1843; and the third, on or before the first day of January, A. D. 1844; all which notes, after being paraphed by me, judge, to indentify them herewith, were delivered to John M. Perry, a duly authorized agent for the said Lilburn P. Perry, who hereby acknowledges the receipt thereof. Now, in order to secure the full and punctual payment of each and all the said notes,

he, the said Samuel Anderson, does hereby specially mortgage and hypothecate, in favor of the said Lilburn P. Perry, and in favor of whomsoever may become the legal holder and owner of any of the said notes, all the following described property, lands and slaves, viz: 1st. A plantation situate in this parish, and lying and fronting on the Mississippi river, about five miles above Vicksburg, being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, range fifteen east, containing six hundred and forty acres more or less, and was acquired by this mortgager by purchase from the said Lilburn P. Perry and Clayton Tiffin, by act passed before me, judge, on the tenth day of April, A. D. 1838. 2nd. The following mentioned negroes, slaves for life, attached to said plantation, viz: Anderson, aged about thirty-six year, July Ann, his wife, twenty-six, Betsey, William and Everett, their children, all aged under ten years; Sandy, thirty, Letha, his wife, twenty-eight, and their children Malinda, twelve, Julia, Hutchinson, and Amy, under ten years; George, thirty-four, Rhody, his wife, thirty-four, and Ary, their daughter, thirteen; Harry, forty, Eliza, his wife, thirty, and their children John, seventeen, Nancy, thirteen, Milly, Squire, Peter, Celia, and Harry, under ten years of age; Jesse, twenty-eight, Fountain, forty; Sally, thirty; Ned, forty; Jordan, thirty-six; Howden, twenty-five; Elijah, twenty-three; Charles, fifteen; Dick, twenty-four; Betty, twenty-two; Bob, thirty-six; Abby, forty; Katy, forty-five; Joe, twenty-eight; Louisa, eighteen, and child Robert, an infant; Susan, eighteen; Matilda, nineteen; Sarah, twenty; Jackson, twenty; Harrison, twenty-one; Henry, twenty-two; Paris, thirteen; Jane Johnson, eighteen; Jane Miller, twenty-two, her child Rachel, an infant, and Overton, aged about twenty-five years.

The said mortgagor hereby binding himself not to sell, alianate, mortgage or incumber the said mortgaged lands and slaves, to the prejudice of this mortgage, I, the said judge, being ex-officio recorder of mortgages for this parish, certify that there does not exist of record in my office any mortgage whatever upon the above described property in the name of Samuel Anderson. And the said John M. Perry declared, that he does hereby acknowledge this mortgage of Lilburn P. Perry with all its provisions.

Done and passed on the day and date first above written, in the parish of Madison aforesaid, in presence of Nelson F. Shelton, jr., and Ambrose Cramer, competant witnesses, who sign with the parties and me, judge.

(The original is signed) SAM'L ANDERSON,
JOHN M. PERRY,
NELSON F. SHELTON, jr.
AMBROSE CRAMER,
RICH'D CHAS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing and within written copy is a true and correct copy and transcript of the original act on file in my office, and recorded in book A, of conventional mortgages, pages 27 & 28.

Witness my signature and the impress of my official seal, this 28th day of December, A. D. 1840.

Signed, RICH'D CHAS. DOWNES,
Parish Judge.

Filed April 14th, '41.

Signed, HENNEN, *Clk.*

Conveyance.

Know all men by these presents that we, John M. Perry, and Francis T. Perry, his wife, of the parish of Concordia, and State of Louisiana, for and in consideration of the sum of thirty-five thousand dollars, lawful money of these United States, to them in hand paid, before the delivery of these presents, by Clayton Tiffin, of the county and city of St. Louis, State of Missouri, and Lilburn P. Perry, of the parish of Concordia, State of Louisiana, the receipt whereof is hereby acknowledged, and of every part and partical thereof, the said Clayton Tiffin & Lilburn P. Perry, their heirs and assigns, are hereby acquitted, exonerated and discharged forever, have given, granted, bargained, sold, and do hereby give, grant, bargain, sell, unto the said Clayton Tiffin and Lilburn P. Perry, their heirs and assigns forever, a certain tract of land situate in the State of Louisiana, and parish of Concordia, on the western bank of the Mississippi river, about five miles above the town of Vicksburg, it being the same tract of land which was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen of range fifteen east, and containing six hundred and forty-four acres, be the same more or less, and being the same tract of land that was purchased by John M. Perry of John W. Marilding and wife: To have and to hold the said granted and bargained premises with all and singular the appurtenances and privileges thereon, thereunto, or in anywise or manner belonging as aforesaid, unto them the said Clayton Tiffin and Lilburn P. Perry, their heirs and assigns forever, from the claim or claims of all persons lawfully claiming or to claim the same.

In testimony whereof we have hereunto set our hands and affixed our seals this first day of August, in the year 1837.

Signed, JOHN M. PERRY, [SEAL.]
FRANCIS T. PERRY, [SEAL.]

Attest:
JOHN M. PERRY, Jr.,
CHARLES B. BARREY.

STATE OF MISSOURI, *county of St. Louis:*

Be it remembered, that on this third day of August, in the year of our Lord eighteen hundred and thirty-seven, before me Patrick Walsh, notary public for the county of St. Louis, in the State of Missouri, duly commissioned and qualified, residing in the city of St. Louis in said State, appeared John M. Perry and Francis T. Perry, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; she, the said Francis T. Perry, being made acquainted with the contents of said convey[ance], and acknowledged on an examination apart from her husband that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without compulsion, or under influence of her said husband.

In testimony whereof, I, the said notary, have hereunto set my [SEAL.] hand and affixed my notarial seal the day and year affixed.

Signed, P. WALSH, *Notary Public.*

UNITED STATES OF AMERICA, *State of Missouri:*

I, Lilburn W. Boggs, Governor of the State aforesaid, do hereby certify, that Patrick Walsh, who has affixed his name to the annexed certificate, was, on the third day of August, in the year of our Lord one thousand eight hundred and thirty-seven, a notary public in and for the county of St. Louis, State aforesaid, duly commissioned and qualified, and that due faith and credit were and are due to all his official attestations as such; and further, that said certificate is in due form of law.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State of Missouri to be affixed, at the city of Jefferson, this twenty-first day of August, in the year of our Lord one thousand eight hundred and thirty-seven, of the independence of the United States the sixty-second, and of the State of Missouri the eighteenth.

Signed, PETER G. GLOVER,
Secretary of State.

By the Governor of the State of Missouri:

Signed, LILBURN W. BOGGS.

Recorded Nov. 1839.

Attest: G. W. KEETS, *P. Judge.*

STATE OF LOUISIANA, *parish of Concordia:*

I do hereby certify the within and aforegoing is a true and correct [copy] from the record in my office.

In testimony whereof I have hereunto set my hand and affix the seal of my office at Vidalia, this first day of July, A. D. 1840.

Signed, JAMES DUNLAP, *P. Judge.*

Conveyance.

STATE OF LOUISIANA, *parish of Madison:*

Be it known and remembered, that on this tenth day of April, eighteen hundred and thirty-eight, before me Richard Charles Downes, parish judge and ex-officio notary public in and for said parish of Madison, duly commissioned and sworn, personally came and appeared Clayton Tiffin, of the city of St. Louis, State of Missouri, and Lilburn P. Perry, of this parish, who each said and declared, that for and in consideration of the sum of seventy-five thousand dollars to them in cash paid by Samuel Anderson, of Warren county, State of Mississippi, before *before* signing this act, the receipt whereof they do hereby acknowledge, they, the said Clayton Tiffin and Lilburn P. Perry, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm, unto the said Samuel Anderson, the whole of that tract or parcel of land situate, lying and being in the parish of Madison aforesaid, on the Mississippi river, about five miles above Vicksburg, it being the same tract of land that was originally confirmed by the board of commissioners of the Western district, Orleans territory, to Charles Collins, in section nine, township sixteen, of range fifteen east, and containing six hundred and forty-four acres, be the same more or less, and being the same tract of land which the said Lilburn P. Perry lately occupied and cultivated as a cotton plantation: To have and to hold the said described tract of land with all the appurtenances unto the said Samuel Anderson, and his heirs and assigns, free from the lawful claims of all persons whomsoever.

And the said appearers further declared, that they do hereby sell and convey, with a guarantee of the title to the said Samuel Anderson, namely, Anderson, July Ann, and their two children, Betsy and William; Sandy, Letha, and their three children, Malinda, Julia and Hutchinson; George, Rhody, and their daughter Ary; Harry, Eliza, and their children, John, Nancy, Milly, Squire, Peter and Celia; Jesse, Fountain, Sally, Ned, Jordan, Howden, Elijah, Anna, Francis, Charles, Dick, Betty, Bob, Davy and Alby. And the said appearers further declared, that they do hereby bind themselves and their heirs, the title unto the said land and slaves, to the said Samuel Anderson, to warrant and forever defend against the lawful claims of all persons whomsoever. And to these presents also appeared at the same time Mrs. Ella T. Perry, wife of the said Clayton Tiffin, and Mrs. Mary Ann Tiffin, wife of the said Lilburn P. Perry, herein duly authorized by their said husbands, and each of them did declare, that in becoming a party to this act they are fully aware of the rights of married women upon the property of their husbands, and on the community of acquits and gaines. And they do hereby approve of this sale, and do hereby renounce in favor of the aforesaid Samuel Anderson, all their dotal, paraphernal

and other rights, of whatsoever kind or character, on the said property.

And I, the said judge, did then explain to each of the said ladies, to wit, Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin, out of the presence and hearing of their said husbands, the nature of their rights and of this instrument, as follows: that they have a tacit or legal mortgage on all the property of their husbands, and upon that of the community.

1st. For the restitution of their dowry, and for the replacing of their dotal property brought in marriage, reckoning from the celebration of the marriage.

2nd. For the replacing of dotal property that may have come to them, either by succession or donation, *recking* from the day when the succession was opened, or the donation perfected.

3rd. For the replacing pharaphernal property sold by the wife, or for the reimbursement of the price when *their* husband has received the same, and appropriated it to his own use; and,

4th. For the debts which they may have assumed jointly with their husbands, and for their general security when they have had the administration of his wife's paraphernal property.

And the said Mrs. Ella T. Perry and Mrs. Mary Ann Tiffin did each declare, that they do still approve this act, and that they do hereby renounce all their aforesaid right in favor of the said Samuel Anderson, well knowing that they can never revoke this renunciation, being at this time above the age of twenty-one years. And to these presents also personally appeared the said Samuel Anderson, who declared that he does hereby accept this sale and conveyance.

And the said Samuel Anderson further declared, that he does hereby waive and dispense with the production of certificate from the office of the recorder of mortgages, and that he does hereby renounce all right of action that he may have against the undersigned judge for want of the same.

Done and passed in the parish of Madison, this tenth day of April, eighteen hundred and thirty-eight, in presence of George W. Grove and Calvin L. Perry, competent witnesses, who have signed with the said appearers and me, the said judge.

(Original signed) CLAYTON TIFFIN, [SEAL.]
VIRGINIA ELLA TIFFIN,
LILBURN P. PERRY,
GEO. W. GROVE, M. A. PERRY,
CALVIN L. PERRY. SAMUEL ANDERSON,
RICH'D CHAS. DOWNES,
Parish Judge.

True copy. Attest:

RICH'D CHAS. DOWNES,
Parish Judge.

Copy of notes.

$13,333 $\frac{00}{100}$.

On or before the first of January, 1843, we promise to pay Lilburn P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for lands and negroes purchased of Clayton Tiffin and Lilburn P. Perry; for the true payment of which, we bind ourselves, our heirs, &c., finally by these presents.

Given under our hands and seals, this the first day of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]
[SEAL.]

Ne varietur, July 9th, 1839.

RICH'D CHAS. DOWNES,
P. judge, parish of Madison, Louisiana.

$13,333 $\frac{00}{100}$.

On or before the first of January, 1844, we promise to pay Lilburn P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for land and negroes purchased of Clayton Tiffin and Lilburn P. Perry; for the true payment of which, we bind ourselves, our heirs, &c., finally by these presents.

Given under our hands and seals, this the first day of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]
[SEAL.]

Ne varietur, July 9th 1839.

RICH'D CHAS. DOWNES,
P. judge, parish of Madison, Louisiana.

$13,333 $\frac{00}{100}$.

On or before the first of January, 1842, we promise to pay Lilburn P. Perry the just and full sum of thirteen thousand three hundred and thirty-three dollars, value received, for lands and negroes purchased of Clayton Tiffin and Lilburn P. Perry; for the true payment of which, we bind ourselves, & &c., finally by these presents.

Given under our hands and seals, this the first of March, 1839.

(Signed) SAM'L ANDERSON, [SEAL.]

Ne varietur, July 9th, 1839.

RICH'D CHAS. DOWNES,
P. judge, parish of Madison, Louisiana.

(Endorsed.)—For value received, I assign the within note to Clayton Tiffin.

L. P. PERRY,
Per his agent J. M. Perry.

October 22nd 1839.

STATE OF LOUISIANA, *parish of Madison:*

I, John T. Mason, clerk of the district and parish courts, in and for said parish, do hereby certify, that the foregoing are true and correct copies of the three notes on file in this office, filed in suit No. 216, in which Lilburn P. Perry is plaintiff, and Samuel Anderson is defendant; that the said suit has not yet been decided.

In testimony whereof, I hereunto set my hand, and affix the [L. S.] seal of said court, at Richmond, this 28th day of December, A. D. 1840.

(Signed) JOHN T. MASON,
Clerk district and parish courts.

Agreement.

CLAYTON TIFFIN
vs. } 2 suits consolidated.
SAMUEL ANDERSON.

Circuit court, 9th circuit.

It is agreed that the depositions, deeds, mortgages, and other documents on file, and the fi. fa., marshal's return on said fi. fa., in the suit of Mosely and Bouldin *vs.* J. M. and L. P. Perry, *is* the whole evidence upon which these suits were tried.

(Signed) PEYTON & SMITH.
ISAAC T. PRESTON, *for deft.*

NEW ORLEANS, *April 14th*, 1841.

Fi. fa.

Circuit court of the United States for the 9th circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from Samuel Anderson the sum of eight thousand two hundred and ninety dollars, with interest of five per centum per annum upon four thousand five hundred and fifteen dollars thereof, from the seventeenth of February, eighteen hundred and forty; and upon three thousand seven hundred and seventy-five dollars thereof, from the sixth of March, eighteen hundred and forty, at the rate of five per centum per annum till paid; and for costs of suit:

Nos. 577 and 606.—Clerk's fees	- - -	$100 66
" " Marshal's fees	- - -	108 20

Cash, which Clayton Tiffin lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana; and if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said Samuel Anderson, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of the said Samuel Anderson, ex-

clusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said Samuel Anderson, in your district, whereof he was owner on the seventeenth day of April, 1841, into whose hands soever the same may have come. And that you have those moneys before our said court, to render to the said Clayton Tiffin for the judgment, on the seventeenth day from date, together with this writ:

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty day of April, A. D. 1841, and 65th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return.

Received the 20th day of April, A. D. 1841, and on the 17th day of May, A. D. 1841, I made demand of the amount of the within writ of the defendant Samuel Anderson, which he refused to pay, or give up property to satisfy the same; I then made a search for property, but could not find any in *his* name of the defendant Samuel Anderson. I therefore return the within writ—no property found.

(Signed) M. MARIGNY, *U. S. Marshal.*
By WM. AMORRETT, *Dep'y U. S. Marshal.*

Alias fi. fa.

Circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana:

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, as heretofore, that you demand from Samuel Anderson the sum of eight thousand two hundred and ninety dollars, with interest of five per centum per annum upon four thousand five hundred and fifteen dollars thereof, from the seventeenth of February, eighteen hundred and forty; and upon three thousand seven hundred and seventy-five dollars thereof, from the sixth March, eighteen hundred and forty, at the rate of five per centum per annum till paid; and for costs of suit:

Nos. 577 and 606.—Clerk's fees - - -		$105 66
" " Late marshal's fees - -		154 20
" " - -		5 00

Cash, which Clayton Tiffin lately recovered by judgment of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana; and if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said Samuel Anderson, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said Samuel Anderson, exclusive of slaves, cannot be found in your district, that then you cause the

same to be made out of the real estate and slaves of the said Samuel Anderson, in your district, whereof he *is* owner on the seventeenth day of April, 1841, into whose hands soever the same may have come. And that you have those moneys before our said court, to render to the said Clayton Tiffin for the judgment aforesaid, on the seventeenth day from date hereof, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of January, A. D. 1843, and 66th year of the independence of the United States.

Signed, DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Received 14th Jan'ry, 1842, but find no property of the defendants in this district, 410 miles from New Orleans, April, 1842.

(Signed) A. SIDNEY ROBERTSON *Marshal*,
J. L. HYNES, *Dep'ty Marshal.*

Rule.

United States circuit court, ninth circuit and eastern district of Louisiana.

TUESDAY, *eight March*, 1842.

The court met pursuant to adjournment: present, the honorable The. H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } No. 606.

On motion of John Claiborne, of counsel for Mandeville Marigny, late marshal for the eastern district of Louisiana, it is ordered that, Messrs. Peyton and Smith do show cause on Friday, the 11th day of March, 1842, at 10 o'clock, A. M., why they should not pay the amount of costs accrued in this case, or attachment issue.

Clerk's office, circuit court of the United States, eastern district of Louisiana.

I hereby certify, the foregoing to be a true copy from the original of record in this office.

Witness my hand, and the seal of said court, at the city of New Orleans, this 8th day of March, 1842.

Signed DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Rec'd March 8th, 1842, and same day served a copy of within rule, on Balie Peyton, esq'r, in person.

Signed A. SIDNEY ROBERTSON, *U. S. M.*

Petition.

CLAYTON TIFFIN, vs. SAMUEL ANDERSON. } No. 795.

To the honorable the judges of the circuit court of the United States, for the ninth judicial circuit, holding sessions at the city of New Orleans, in and for the eastern district of Louisiana.

The petition of Clayton Tiffin, who avers that [he] is a citizen of the State of Missouri, residing in Saint Louis, in said State, respectfully shows: that Samuel Anderson, who is a citizen of the State of Louisiana, residing in the parish of Madison, in said State, and within the jurisdiction of this honorable court; and that the said Samuel Anderson is justly indebted to your petitioner in the sum of three thousand seven hundred and seventy-five dollars, with interest thereon at the rate of five per cent. per annum, the legal interest in the State of Louisiana, where the debt sued for was contracted, from the 4th day of March, A. D. one thousand eight hundred and forty-one, until paid, for this, to wit: that petitioner is holder and owner of a promissory note, drawn on 10th April, 1838, by J. M. Perry and Sam'l Anderson, whereby [?] and each of them promised to pay on the first day of March, 1841, to the order of petitioner, three thousand seven *thousand* and seventy-five dollars, without defalcation, and for value received, which note is hereto annexed, and made part hereof; petitioner alleges further, that the said Samuel Anderson though amicably requested has neglected to pay the amount, or any part thereof, for which he is indebted as aforesaid in solido.

Wherefore petitioner prays, that the said Samuel Anderson be cited to appear and answer this petition, and due proceedings [being made] be condemned in solido to pay petitioner the aforesaid sum of three thousand and seven hundred and seventy-five dollars, with interest at the rate of five per cent. per annum until paid, and costs of suit, and for general relief. And as in duty bound, &c.

Signed PEYTON & SMITH, *Att'ys for pets.*

Note annexed.

$3,775 00. On the first day of March, eighteen hundred and forty one, we, or either of us, promise to pay to the order of Clayton Tiffin, three thousand seven hundred and ninety-five dollars, without defalcation, and for value received, this 10th day of April 1838.

Signed J. M. PERRY,
SAMUEL ANDERSON.

Citation.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

CLAYTON TIFFIN vs. SAMUEL ANDERSON. } No. 795.

To Samuel Anderson. You are hereby commanded to summon Samuel Anderson, and you Samuel Anderson are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 4th day of March, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the said United States of America the 65th.

Signed DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Received the 4th day of March, A. D. 1841, and on the 13th day of March, A. D. 1841, I served a copy of the within citation, together with a certified copy of plaintiff's petition and documents annexed, on the within named defendant, Samuel Anderson, he being absent, by leaving the same at his domicil in the hands of Nelson F. Shelton, a free person, apparently above the age of fourteen years, living in the house, whose name was known to me in the parish of Madison, State of Louisiana, 420 miles from Louisiana.

Signed M. MARIGNY, *U. S. Marshal,*
By WILLIAM AMORRETT,
Deputy U. S. Marshal.

Agreement.

We agree that the same evidence be used in this case, as in the other two, with the same title.

Signed ISAAC T. PRESTON,
PEYTON & SMITH, *for pl'tffs.*

April 17th, 1841.

Answer.

To the honorable circuit court of the United States for the 9th circuit, in and for the eastern district of Louisiana, the answer of Samuel Anderson, to the petition filed in this honorable court against him by Clayton Tiffin, respectfully shows:

That it is true he signed the note in plaintiff's petition described,

but he alledges that the said note, and two others of the same amount, were given for the interest of said Tiffin in a tract of land in the parish of Madison.

Your petitioner alleges, that at the time it was agreed and understood that, as soon as your petitioner should give another note secured by mortgage on the land, of the aggregate amount of the said three notes, including the one sued upon, should be cancelled and given up; your respondent shews that shortly afterwards he did give another note, as part of consideration of the purchase of said plantation, for the amount of about thirteen thousand three hundred and thirty-three dollars, thus covering the three existing notes, and which note of thirteen thousand three hundred and thirty-three dollars, your respondent gave and secured by mortgage on the land and negroes purchased, and which said note was thereupon transferred to the said Clayton Tiffin in exchange and extinction of the note now sued upon, and which your respondent no longer owes. Your respondent, therefore, respectfully prays that the note sued upon may be cancelled and delivered up to him; that he may have judgment in his favor against plaintiff's demand and for costs of suit; that your honor would afford all other and further relief, which justice, equity, and the nature of the case may require; and that this cause may be tried by a jury. As in duty bound, &c.

Signed ISAAC T. PRESTON,
Att'y for respondent.

Fi. fa.

Circuit court of the United States for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from Clayton Tiffin the sum of two hundred and seventy-seven dollars and twenty-three cents amount of costs, which Duncan N. Hennen clerk, and Mandeville Marigny, late United States marshal, recovered by judgment of said court.

Costs of fi. fa. - - - - - - - -	$5 00
Marshal's, - - - - - - - - -	2 00

Cash, which Duncan N. Hennen and Mandeville Marigny recovered by judgment of the circuit court of the United States, for the ninth circuit, and eastern district of Louisiana; and if he shall not pay the same on demand, that then you cause the same to [be] made out of the personal estate of said Clayton Tiffin, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said Clayton Tiffin, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real es-

tate and slaves of the said Clayton Tiffin in your district, whereof he was owner on the 11th day [of] March, 1842, in whose hands soever the same may have come. And that you have those moneys before our said court to render to the said Duncan N. Hennen and Mandeville Marigny for the judgment aforesaid, on the seventieth day after date, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this seventeenth day of March, A. D. 1842, and 66 year of the independence of the United States.

Signed, DUNCAN N. HENNEN, *Clk.*

Marshal's return.

Endorsed.—In the case of the case of Clayton Tiffin vs. Saml. Anderson.

Rec'd March 16th, 1842; stayed by order of Duncan N. Hennen, esq'r.

Signed, A. SIDNEY ROBERTSON, *U. S. M.*
By WM. K. STYLES, *Dy. U. S. M.*

Entry on record of 12*th April*, 1842.

CLAYTON TIFFIN
vs. } No. 795.
SAMUEL ANDERSON.

This cause, which had been regularly fixed for trial for this day, was, by consent, continued until to-morrow.

Entry on the minute of 13*th April.*

CLAYTON TIFFIN
vs.
SAMUEL ANDERSON.

This cause came on this day for trial, when, by consent of parties, the trial by jury is waived, and the cause proceeded on trial before the court; when, after hearing the evidence, the cause was submitted to the court without argument, and thereupon the court took time to consider.

Judgment.

CLAYTON TIFFIN
vs. } No. 795.
SAMUEL ANDERSON.

The court having maturely considered this cause, do now order, adjudge and decree, that a judgment be entered up in favor of the plaintiff, Clayton Tiffin, and against the defendant, Samuel Anderson, for the sum of three thousand seven hundred and seventy-five dollars, with interest thereon at the rate of five per centum per

annum, from the fourth day of March, eighteen hundred and forty-one until paid, and for costs of suit.

Judgment entered 20th day of April, 1842.

Judgment signed 26th day of July, 1842.

Signed, THEO. H. McCALEB, *U. S. judge.*

Petition of appeal.

To the honorable circuit court of the United States of the fifth circuit, in and for the eastern district of Louisiana, sitting in chancery, the petition of Nelson F. Shelton respectfully shews:

That your petitioner is dissatisfied with the decree of this honorable court in the case wherein Lilburn P. Perry and Clayton Tiffin are complainants, and your petitioner, with others, are respondents, and is advised there is error in said decree, in this—

First. That this court had no jurisdiction of the case.

Secondly. That the bill should have been dismissed for want of equity, and because complainants had their remedy at law.

Thirdly. That the court admitted illegal evidence, and against the rules of proceedings in equity; and

Fourthly. The decree should have been for your respondent, and not against him, because he was in possession of the land and slaves in controversy, under a good title, with equitable incumbrance against them, but all equity in his favor.

These four grounds he assigns as error in the decree, and alledges that the pleadings and evidence entitled him to a decree in his favor on the *the* whole merits of the case.

Wherefore he prays an appeal from said decree against him to the Supreme Court of the United States, and that execution against him may be stayed, on his giving bond with Rice Garland, Robert Carter Nicholas and James Dick, as his sureties, in such sum as your honor may require to prosecute his appeal with effect, or satisfy any judgment that may be rendered against him. As in duty bound, &c.

Signed, ISAAC T. PRESTON,
Solicitor for respondent.

Order.

Let an appeal be granted in this case as prayed for on the complainants, Nelson F. Shelton, giving bond with James Dick, Robert Carter Nicholas and Rice Garland, as securities, in the sum of forty-five thousand dollars, conditioned according to law; this appeal not to operate as a supersedeas.

Signed, THEO. H. McCALEB, *U. S. judge.*

Bond of appeal.

STATE OF LOUISIANA, *city of New Orleans:*

Know all men by these presents, that we, Nelson F. Shelton, residing in the State of Virginia, as principal, and Rice Garland,

Robert Carter Nicholas and James Dick, residing in the State of Louisiana, as securities, are held and firmly bound unto Lilburn P. Perry and Clayton Tiffin in the sum of forty-five thousand dollars; to the payment of which to the foregoing obligees, their heir, executors, administrators and assigns, we jointly and severally bind ourselves, our heirs, executors and administrators finally by these presents.

Whereas the above named Nelson F. Shelton hath taken an appeal to the Supreme Court of the United States from a judgment or decree rendered at the last term of the ninth circuit court of the United States, sitting in chancery, in and for the eastern district of the State of Louisiana, in the suit wherein Clayton Tiffin and Lilburn P. Perry are complainants, and the said Nelson F. Shelton, Samuel Anderson, Robert Anderson, Hillery Mosely and William W. Bouldin are respondents.

Now, therefore, the condition of this obligation is such that, *that* if the above named Nelson F. Shelton shall prosecute his said appeal to effect, and shall pay and discharge to the said obligees herein, and to the defendants in said appeal, the amount of any judgment or decree that may be rendered against him by reason of the prosecuting of said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the parties to these presents have hereto subscribed their names and affixed their seals at the city aforesaid, this day of July, 1843.

(Signed,) NELSON F. SHELTON,
R. GARLAND,
JAMES DICK,
ROBERT CARTER NICHOLAS.

In presence of—witness
W. H. R. Hill,
James McLean.

Tiffin & Perry,
vs.
Samuel Anderson et als. } Circuit court, in equity.

Reasons of the court for overruling the pleas and demurrers of the respondents.

The court has maturely considered the objection to the jurisdiction on record in this suit, raised by the pleas and demurrers filed by the respondent herein, the arguments of counsel, and the authorities cited on either side. The plea to the jurisdiction refer to the character of the parties respondents, declaring that four of the five defendants are citizens of the State of Missouri; and as the plaintiffs are citizens of the State of Virginia, this court cannot, under the Constitution and laws of Congress establishing the federal judiciary, and defining its powers, entertain jurisdiction over the parties.

With regard to two of the defendants, (Mosely and Bouldin,) the answer to the plea presents an issue in law; and with regard to the other *to*, (Anderson and Shelton,) an issue of fact. With regard to Mosely and Bouldin, it is admitted that they are citizens of Virginia, and it is declared in the bill; but no account, payment, discovery, or relief, is sought directly from them; and although they may be indirectly affected by the result of the suit, they are yet *nominal parties*. But even were they joint defendants, under the circumstances of the case, the court considers that their citizenship in Virginia would not onset the jurisdiction of the court; why are they made parties? Because the plaintiffs seek to recover property on monies, for the payment of which they allege that they have an equitable lien *an* mortgage upon the property which is in possession of Anderson and Shelton, and which they claim under a judgment recovered i[n] this court by Mosely & Bouldin. The plaintiffs seek, as one of [t]he objects of their bill, to set aside and annul that judgment; they declare it to have been improperly rendered against a party not cited, and therefore Mosely & Bouldin are made parties to the bill.

Now, for this purpose, the court is clearly of the opinion that it may exercise jurisdiction over the subject matter, notwithstanding the citizenship of Mosely & Bouldin. They claimed the jurisdiction of this court to obtain the judgment, and they are subject to that jurisdiction in any proceedings had to effect that judgment. If this were not so, parties might be subjected to great wrongs without a remedy; for if a judgment can not be reversed or enjoined in the circuit court where the judgment is obtained, it can be done no where, and the rights of the parties suffering in consequence of judgment illegally rendered, would be forever concluded.

The question is clearly settled in the case of Dunlap vs. Stetson, 4 Mason, 349. It is there decided, that "a bill in equity to enjoin a judgment lies in the circuit court where the judgment is rendered, though the original plaintiff resides in and is a citizen of another State.

With regard to the citizenship of Anderson and Shelton, an issue of fact has been made, and some testimony has been taken and submitted to the court. From this it appears that they have resided in this State, the former very nearly three years, and the latter more than two years; that they have been carrying on business during *during* that time as cotton planter[s], upon the plantation, and with the negroes in controversy in this suit. Now the court considers this residence as sufficiently long and permanent to give to the United States court jurisdiction over them as citizens of Louisiana, notwithstanding any declarations which they may have made to the contrary; which declarations, however, do not appear by the testimony to have been uniform, for to one witness it seems they declared themselves citizens of Louisiana. There is no doubt, however, that they have acquired the right of citizenship in this

States by the length of their residence; and they are not the less citizens, so far as aminability to the federal tribunal is concerned, because they do not choose to exercise their rights, or because they do choose to declare themselves not citizens. The court then considers that the respondents have failed to establish the pleas to the jurisdiction, relating to the character and citizenship of the parties upon either issue.

The demurrers set forth that the plaintiff[s] have their remedy at law for all matters and things sought for in this their bill in equity. It may be considered as well settled, that before a bill in equity can be dismissed upon demurrer upon this ground, it must appear not only that there is a remedy at law, but that it is *a* plain and adequate, and as efficacious to the ends of justice, as that sought in equity. The plaintiff[s] seek, in this bill, to establish and enforce a lien, which they allege has accrued to them as vendors for the payment of certain monies upon the property in possession of the defendants. This lien, if it exists, is an equitable lien, unknown at law, and to be enforced only in a court of equity.—2nd Story equity, 1217, et seq. So far as that portion of the purchase money is concerned, which the plaintiffs allege to be unpaid, and which is not included in their mortgage, the only remedy for its payment by the security of the property sold, is in a court of equity; for it is only an equitable lien, if any, which the plaintiff have upon the property as security for that portion of the purchase money. Upon this ground, if upon no other, the equity jurisdiction over the subject matter must be maintained. But the bill also seeks the reversal of a judgment recorded in this court upon the grounds set forth. Now, for this purpose, equity is the peculiar and appropriate, if not the only, jurisdiction to effect the relief prayed for, and it was so considered in the case already cited in 4th Mason, and such, indeed, seems to be the current of authority; but *of* the remedy, sought and prayed for in a bill in equity, can be obtained at law only by a multiplicity of suits, that of itself is a sufficient ground upon which to maintain equity jurisdiction. The court is clearly of the opinion, that if the plaintiffs could obtain the remedy for which they pray in their bill, by proceedings at law, they would be obliged to resort to various suits against seperate and distinct parties, and in several courts. Surely, then, their remedy could not be regarded as plain or adequate, or as efficient to the ends of justice, as that which they may obtain by this bill in equity; all the parties, and the whole subject matter of controversy are before the court, and it may proceed to render such decree, upon the testimony and final hearing between the parties, as the principles of laws and justice, and the dictates of equity and good conscience may require; and such a decree as could not be obtained but as the result of several judgments at law, even if it could be obtained at all. Upon these grounds, therefore, [the] court considers that the pleas and demurrers filed by the respondents herein are not sustained, and the court

decrees that the same be overruled at the cost of said respondents, and that they be assigned to answer to the bill in equity, filed against them at the suit of Clayton Tiffin and Lilburn P. Perry.

TIFFIN & PERRY, vs. N. F. SHELTON & others. } In equity.

Reasons for the final decree of the court.

The complainants in this suit claim the restoration to them of the land and slaves described in their bill from the respondents, Robert Anderson and Nelson F. Shelton, as the third possessors of the said property, or the payment to them of the unpaid purchase money upon said property, on the sale thereof by them to the respondent Samuel Anderson. There claim is based, 1st, upon their equitable lien as vendors for the unpaid purchase money. 2nd. Upon the mortgage given by the respondent, Samuel Anderson, upon the property therein described at the time of his purchase from the complainants, to secure the payment of $40,000, as evidenced by three several promissory notes, each for the sum of thirteen thousand three hundred and thirty-three dollars, and payable, according to there tenor, to Lilburn P. Perry, with a recital in each note, that the same was given for land and slaves purchased by the promissor, Samuel Anderson, from Clayton Tiffin and Lilburn P. Perry. These notes are paraphed by the notary, to connect them with the mortgage executed at the same time.

It is admitted that the property now in controversy was, on the 10th day of April, 1838, the property of the complainants, at which time they sold the same to Samuel Anderson; that said Anderson agreed to pay to complainants, for said property, the sum of $75,000; thirty-five thousand dollars of this sum was to have been paid in cash, and the balance of forty thousand dollars was payable in accordance with the notes already recited and secured by mortgage.

With regard, therefore, to the first ground upon which the claim of the complainants is based, to wit, the vendor's lien in equity, for the security and payment of the purchase money, it applies more particularly to the sum of $35,000 agreed upon as the cash payment.

That the vendors of land have in equity a lien upon the land for the payment of the purchase money, as a general rule, is well established; that this lien may be enforced upon the property in the possession of third persons, not bona fide holders of the legal estate for a valuable consideration, without notice of the non-payment of the purchase money by the original vendee, is also too well established to admit of controversy.—2 Story, equity, 462 et seq. It appears very clearly by the testimony offered by the complainants, and uncontradicted by any evidence on the other side, that the cash payment of $35,000, which the respondent, Samuel Anderson, [was] to make to the complainants as a portion of the consideration

of the purchase, has in truth never been otherwise satisfied, (except as to about $13,000, which consisted of a note or notes held by Sam'l Anderson against L. P. Perry, and for which he gave his acquittance,) than by the transfer to the agent of complainants, John M. Perry, of a certain note for about the sum of $18,000, signed by three persons, citizens of the State of Mississippi. This note, it appears, was at the time of its transfer absolutely worthless, and has been (as it further appears from the record) sued upon in the State of Mississippi, and the parties liable thereon have been pursued to a final return of "nulla bona" by the sheriff.

From the testimony adduced on the part of the complainants, the court is also satisfied that the respondents Robert Anderson and Nelson F. Shelton, who are third persons holding the property in controversy as third possessors thereof, cannot be regarded as bona fide holders of the legal estate for a valuable consideration without notice of the non-payment by Samuel Anderson of this sum of $35,000; for in the first place they claim as the judgment creditors of Samuel Anderson, having seized and sold the property and become the purchasers thereof at the sheriff's sale upon execution in their favor issued against Samuel Anderson in the district court of the parish of Madison. According to the authorities above cited, there can be no doubt that the equitable lien of the vendor may be inforced against a third possessor who claims by virtue of a judgment against the vendee. In the second place the testimony leaves no doubt upon the mind of the court, that the respondents Shelton and Robert Anderson were at the time fully aware of all the facts in relation to the manner in which Samuel Anderson had undertaken to satisfy the cash payment of $35,000, for the evidence shows that the note for $18,000 alluded to above, was in fact the property of Nelson F. Shelton, and that it was given by the makers of it for said property belonging to said Shelton, and sold them by Samuel Anderson as Shelton's agent. The facts as they appear from the testimony, so far as concerns the lien of the vendors upon the property, though in possession of third persons, for the payment of the $35,000 portion of the purchase money, certainly presents a very strong case for the equitable consideration of the court; and this portion of the case has been very elaborately argued by the counsel on either side. Were it not for the fact that a portion of the purchase money, to wit, the $40,000, is actually secured by a mortgage from Samuel Anderson to L. P. Perry, the court could not entertain the least doubt upon the subject. But how far the giving and receiving this mortgage for a portion of the purchase money operated as a waiver of the equitable lien for that portion not paid or secured; or how far the receiving of said mortgage by L. P. Perry could in any event operate to extinguish or effect the equitable lien of Clayton Tiffin, are questions of serious moment and requiring great consideration. But the view which the court has taken of the claim of the complainants under the conventional mortgage from the said

Samuel Anderson; and the conclusion to which it has come upon this subject, after a full consideration of the testimony and the arguments, will preclude the necessity of a decision of these questions; for if the claim under the mortgage be well founded, there is no doubt that the sum of $40,000, with the legal interest upon the note given, will more than cover the value of the property at the present time. The fact, however, of the non-payment by the vendee of the complainants, even of that portion of the consideration which was to have been paid in money, and the knowledge of that fact brought home to Shelton and Robert Anderson, present so strong a case against them in "pro conscientiæ," that a court of equity may not perhaps dismiss it altogether from their mind, in forming conclusions as to the other and distinct grounds of claim set forth in the bill of complainants.

Upon the sale of the property by Clayton Tiffin and Lilburn P. Perry to Samuel Anderson, the said Anderson executed his mortgage to secure the payment of the sum of $40,000, a part of the consideration of the purchase of the plantation and slaves in controversy. The three notes amounting to said sum of $40,000, are made payable to Lilburne P. Perry; but it is set forth in each of them, that they are given "for the plantation and slaves purchased by" the respondents "Samuel Anderson from Clayton Tiffin and Lilburne P. Perry." The mortgage is executed to Lilburne P. Perry, but it is declared to be given to secure the payment of the notes (describing them) to the said Lilburne P. Perry, or to whomsoever may be the legal holder or owner of the said notes.

The bill of complaint alleges, that the complainants, as they were the joint owners in equal and undivided interest of the property sold, were also the joint owners of the notes given in payment, or as evidence of the sum to be paid for said property. It is not contended by the respondents that the notes have ever been paid, but the answer of the respondents (or rather the answer of Nelson F. Shelton, who is now the only one contending against the claim of the complainants,) sets up certain matters of defence to the claim, by which it is alleged that the complainants have lost all right or property in the notes or mortgage, and that the respondents have a right to hold and possess the property free from the incumbrance in favor of the complainants created by Samuel Anderson, their vendee.

If, therefore, the defence set up by the respondents be tenable, the complainants have parted with a valuable property, consisting of a plantation and slaves. Upon their sale, the sum of $40,000 was secured by a special mortgage upon the property. That sum has never been paid. The complainants have got nothing for their property. Nay, they have lost their property, and all recourse upon it, notwithstanding in express reservation of a special mortgage. The mere statement of facts would seem to indicate clearly enough that there is something wrong in the matter. Something

indeed most palpably in violation of equity and good conscience. Something which appeals most strongly and directly to the remedial powers of a court of equity. Such a state of facts can hardly be conceived to exist, without implying an infringement of that moral maxim of law which is engrafted upon the system of jurisprudence of every enlightened community, and which declares that no man ought to enrich himself at the expense of another. But the court has given to the very long and able argument of the counsel of the respondents, as well as to that of the complainants, upon this branch of the controversy, the fullest and most patient consideration; and will now, as briefly as possible consistently with the importance of the cause, proceed to state the various reasons which have influenced it, the conclusion to which it has finally arrived; and, in the first place, in order to a more complete understanding of those reasons, a recapitulation of the facts which are not in dispute, but which are admitted and averred to exist, may be necessary.

After the execution of the mortgage by Samuel Anderson to L. P. Perry, to secure the sum of $40,000, he executed another mortgage upon the same property to the respondents, Robert Anderson and Nelson F. Shelton, (who are the father and uncle of Samuel Anderson,) and in this latter mortgage, the previous one to L. P. Perry is recited and set forth as a pre-existing incumbrance. Shortly after this, and long before the maturity of either of the notes for the $40,000, it seems that the confidence of the complainants in the integrity of their vendee, Saml. Anderson, was shaken, for a suit was instituted by their agent, John M. Perry, in the district court for the parish of Madison, where the property is situated, in the name of L. P. Perry, for the purpose of obtaining the conservative process of sequestration under the laws of Louisiana. The necessary affidavit for a sequestration was made by the agent of the plaintiff, to wit: of the indebtedness of Samuel Anderson, and that he had good reason to fear and apprehend that the property mortgaged to secure the debt would be impaired, destroyed, or removed out of the State before the maturity of the notes, or he could have the benefit of his mortgage. The notes were filed with the petition, but no suit was instituted upon them. No judgment was prayed for upon them, or for their amount. It was a simple petition for a sequestration. It appears by the record of those proceedings, which is filed in this case, that the process of sequestration was never served, but that shortly after the filing of the petition, for some cause or other, which might have allayed the fears of the agent of complainants, he gave written instructions for its discontinuance. The notes, however, he did not withdraw, but allowed to remain in that court. With regard to the further proceedings in that suit, which took place long subsequent to this, the court will have occasion to allude to them more fully, in connexion with another point of the case. These facts are now stated in order to shew the situation of the notes for $40,000, the better to explain, as

we proceed, the circumstances under which it is contended that the complainants have lost their property.

Now, it appears (by the record of another suit filed in this case) that on the day of in the year , Hillery Mosely and William W. Bouldin, as citizens of the commonwealth of Virginia, brought their action in this circuit court of the United States against the complainants, Lilburn P. Perry, together with John M. Perry, alleging them to be citizens of the State of Louisiana, claiming judgment for the sum of $. By the record, it appears that Lilburne P. Perry was never served with process of citation in this suit, but the return of the marshal as to him is "non citamentos." The testimony in fact conclusively shows that Lilburne P. Perry, shortly after he made sale of his property to Samuel Anderson, in July, 1838, permanently removed with his family from the State of Louisiana, and established himself in the city of St. Louis and State of Missouri, where he has ever since resided, in the practice of his profession as a physician. It appears, however, that notwithstanding the want of service upon L. P. Perry, B. A. Crawford, esq., an attorney-at-law, who was employed by the other defendant to appear on his behalf, entered his appearance, and filed an answer for both defendants. His testimony was taken by the commissioner upon interrogatories, and is on file in this suit. He says that he was never employed, either directly or indirectly, by Lilburne P. Perry, or by any one on his behalf, to appear, answer, or defend the suit for him; and that his appearance for him was an inadvertence and mistake on his part, and that he did not know that at the time of the institution of the suit, Lilburn P. Perry was a citizen of the State of Missouri. It appears further, by the record of this suit, that after due proceedings had, the plaintiffs, Mosely and Bouldin, recovered judgment against the defendant, L. P. Perry, for the sum demanded; that a writ of fieri facias issued upon that judgment, and after being returned not satisfied, an alias writ was issued, and upon this writ the marshal makes the following return: "Received 23d day of October, 1839, and on the same day made demand of the amount of the within fi. fa. at the residence of the within defendant, John M. Perry and Lilburne P. Perry, which was refused. I seized, on the 23d day of November, 1839, a debt due by Samuel Anderson to the within named Lilburn P. Perry for forty thousand dollars, where there was three notes given by said Anderson to said Perry, and mortgage on fifty slaves and six hundred and forty acres of land, to secure the payment of said debt to satisfy this fi. fa., and after advertising the claim ten entire days from the last day of the notice of the seizure, and having appraisers appointed according to law, who appraised the property to be worth twenty-eight thousand dollars, cash valuation, on the 10th day of December, 1839; and then on the same day I offered the property for cash sale, and after repeatedly crying it, there was no sale for want of a bid to the amount required by law. And then

I re-advertised the same property, and sold the same on the 4th day of January, 1840, on a credit of twelve months, when Samuel Anderson become the purchaser thereof for the sum of five thousand dollars, he being the highest and last bidder; for which he gave his bond, with John B. Bemiss and Aaron Lilly as surety, which bond I received, and the said bond is herewith returned. The marshal then proceeded, as it appears by his deed filed, to execute to Samuel Anderson, for his agreement to pay the sum of $5,000 in one year, his act of sale of the notes for $40,000, which he, Samuel Anderson, had agreed to pay for the property which he had purchased from Clayton Tiffin and Lilburn P. Perry, the mortgage which the said Samuel Anderson had given as security for the payment of those notes upon the property which he had purchased, and the plantation and slaves described in the said mortgage, and by virtue of these proceedings, the said Samuel Anderson, then being in exclusive possession of the property, contended that the incumbrance, which he had created upon it, to secure the sum which he had agreed to pay for it, was discharged and extinguished. The ground, then, upon which the claim of the respondents, Robert Anderson and Nelson F. Shelton, is based, becomes apparent. If the prior mortgage from Samuel Anderson to Lilburne P. Perry was, by the proceedings above stated, extinguished, then the subsequent mortgage to Shelton and Robert Anderson would operate upon the property to its exclusion. The respondents, Shelton and Anderson, contend, in their answer to the bill, that the mortgage to Perry was extinguished by the purchase as above set forth by Samuel Anderson. It appears, as they further set forth in their answer, that in the month of April, 1841, they, the said Shelton and Robert Anderson, instituted a suit against Samuel Anderson, in the district court of the parish of Madison, on the mortgage in their favor, obtained judgment in said suit, and after due proceedings, upon an order of seizure and sale of said property on the 14th of June, 1841, they, the said Shelton and Robert Anderson, became the purchasers of the said plantation and slaves; and under said purchase, they entered into possession, and occupied the same until the institution of this suit. In addition to this, there is one other ground set forth in the answer of Nelson F. Shelton, upon which also he bases his claim, which may as well be here stated, to avoid a repetition of the facts hereafter. He alleges, that it has been decided by the district court of the ninth district of Louisiana, setting in the parish of Madison, in the suit, to which allusion has already been made, of Lilburn P. Perry vs. Samuel Anderson, that the notes given by said Anderson to the said Perry, and the mortgage given to secure their payment, were extinguished. By reference to the record of that suit, which is filed in this case, it appears that the decision set up in the answer to the bill of complaint, was procured by the respondents after the institution of this suit, and between the time of service of the sub-

pœnas upon them, and the time given them by law to file their answers to the bill. It further appears, upon inspection of that record, that no suit was instituted upon the notes by Lilburne P. Perry against Samuel Anderson; that a petition was filed, praying for a mandate of sequestration solely, but that a discontinuance was entered before service of that process. It appears that no subsequent step was taken until after the proceedings above recited, by which Samuel Anderson become the purchaser at marshal's sale, upon execution in favor of Mosely and Bouldin against Lilburn P. Perry, of the notes and mortgages which he had given to said Perry, and which had been filed by his agent in the district court, for the ninth district of Louisiana, at the time when he petitioned for the mandate of sequestration of that court.

But it seems that, a year or more after these proceedings, an answer was filed by Samuel Anderson, in which he claims the notes as his own property, reciting fully all the proceedings had in the suit of Mosely and Bouldin in this circuit court of the United States vs. Lilburne P. Perry, from its institution down to his purchase of the notes and mortgage at the marshal's sale, and the marshal's deed to him of the property; and praying that court to pronounce upon the validity of the judgment rendered by this circuit court, and the legality of all the proceedings had under it, and to decide that he, the said Samuel Anderson, was, by virtue of said proceedings, the true and rightful owner of said notes and mortgage, and that the same were extinguished. It further appears by that record, that upon this answer being filed by Samuel Anderson, claiming the notes and mortgage, counsel appeared on behalf of Lilburne P. Perry, protesting against action in the premises by that court; that there was no suit between the parties, and nothing upon which the court could act; and lest there should be any doubt upon the matter, it appears that, upon his motion, the court ordered that the suit be discontinued, and that order of the court, Judge Tenny then presiding, appears upon the record. It further appears by that record, and by a comparison of dates, that notwithstanding the repeated discontinuance of that suit, both by the plaintiff's counsel, and by order of court, that subsequently, and as has already been stated, between the service of the subpœnas, which issued upon this bill of complaint upon the respondents, and the time allowed them for filing their answers, that court, Judge Curry then presiding, proceeded to pronounce the decision, which has been set up, and relied upon in the answers of the respondents.

The court has now stated all the facts which are believed to be material to a full and complete understanding of the merits of the controversy upon either side, as they are developed by testimony before the court, most of which is matter of record, or authenticated acts; but all of which it is believed is mentioned. And now let us proceed to the consideration of the various objections which have been urged by the counsel of the complainants, to the different

grounds upon which the respondents have based their defence, and their claim upon the property in controversy, and to the reasons which have induced the conclusions of the court upon the validity of those objections.

The first question which naturally presents itself to the mind of the court, is as to the validity of the judgment recovered in this court at the suit of Mosely and Bouldin *vs.* Lilburne P. Perry. The validity of that judgment, and the legality of all the proceedings under it, being directly attached and denied in the bill filed by the complainants, Mosely and Bouldin were properly made parties thereto; and although they are citizens of Virginia, (for the reasons already given by the court in overruling the pleas of the respondents,) the jurisdiction of this court over the subject matter is not thereby affected. The bill, as to them, is not an original suit within the sense of the 11th section of the judiciary act of 1789, chap. 20. And the case of Dunlap *vs.* Shelton, 4 Mason, C. C. R. 349, is direct to this point. Indeed it is obvious, that if this court were deprived of its jurisprudence to examine into and decide upon the validity of this judgment, by reason of the citizenship of the parties plaintiff in Virginia, a wrong would exist without a remedy—for if the judgment cannot be examined here, it is quite clear that it can be examined no where. Mosely and Bouldin have been made parties by the appointment of the same counsel to defend them here, who were by them employed to obtain the judgment, and a copy of the bill has been served upon B. Peyton, esq., who has notified his clients of the suits, and corresponded with them upon the subject. Even admitting them to be actual and not nominal parties to the bill, there is yet no question as to the jurisdiction in the mind of the court, and the judgment is not collaterally attacked. Then what are the objections to the validity of the judgment, why this court would be compelled to regard it as fatal?

The second objection to the validity of the judgment made by the counsel of the complainants is, that it is rendered against a party who was never served with process, who was never in any manner notified of the pending of the suit, and who did not appear either in person or by his attorney duly authorized. If, after the return of "non est inventus" by the marshal, upon the citation to Lilburne P. Perry, they had proceeded, without any appearance on his part, to the trial of the case, and had rendered judgment against him, as well as against the defendant who *was* served, and who did appear, there can be no question upon the authorities, that such a judgment as that would be an absolute nullity. The record itself would show an entire want of jurisdiction over the person of the defendant. He was not subjected to its jurisdiction either by a personal citation, or by any proceeding *in rem*, as there was no attachment. Under such circumstances, it would be the duty of any court, in which such a judgment is offered in evidence, in an action concerning the matter adjudicated, or purporting to have been so, to

declare it a nullity. This has been *to* often decided to admit of controversy. Now, in this case, the judgment in favor of Mosely and Bouldin *vs.* Lilburn P. Perry, reversed in this court, cannot be treated by the court as an absolute nullity, as shewing upon the face of the record a want of jurisdiction in the court; because, although the defendant was never cited to appear, or notified of the suit, yet an appearance was made on his behalf by an attorney-at-law. But the counsel for the complainant contends, and the court cannot but assent to the position, that it may be shown by testimony. In the first place, it appears that, at the time of the institution of the suit of Mosely and Bouldin *vs.* Lilburn P. Perry, that Perry was in fact a citizen of the State of Missouri, residing in the city of St. Louis—that he had permanently established himself in that place some time previous. No service was therefor made upon him, and the marshal's return "non est inventus." Mosely and Bouldin were, and are still, citizens of Virginia; Lilburne P. Perry was, and is, a citizen of Missouri. In a suit instituted by the former against the latter, in the circuit court of Louisiana, is the objection to the jurisdiction of that court, a matter personal to the defendant, which he may waive by appearance. The court is of the opinion that it is not. The circuit courts of the United States are courts of limited jurisdiction, which can only be exercised in cases in which it is confered by act of Congress; where it does not in this manner arise, it cannot be confered by the consent or argument of parties.—Ex parte Cabrera, 1 Wash. C. C. R. 232.

The privilege of the defendant, exempting him from arrest out of the district in which [he] resides, is a personal privilege which he may waive by appearance. The defendant has a right to insist upon the suit being instituted against him in the district of his residence, unless he be found and served with process out of that district; but it is a personal right or privilege which may be raised by appearance. But where both plaintiff and defendant are citizens of different States, yet neither of them being a citizen of the State in which the suit is instituted, the voluntary appearance of the defendant cannot surely confer jurisdiction upon the court.—Gracie *vs.* Palmer & al., 8 Wheaton, 699, 5 Cond. Rep. 561.

If, therefore, the validity of the judgment were solely dependant upon this opinion, that the attorney appearing was not in any manner employed so to do; that his appearance was without authority, and through inadvertance, and that if this be shewn in the present case, to the satisfaction of the court, it will then become the duty of the court to decree the nullity of the judgment.

Surely a party, defendant in a suit, who has never been served with process, cannot be regarded as waiving his right to personal notice, a right which lies at the very foundation of the administration of justice, by the appearance of some person on his behalf *when* he has never employed, and of whom he may never have heard. It would certainly be a most extraordinary doctrine to main-

tain, that a man is to be bound by the acts of another, whose service he has never sought, and whose agency was never procured or desired, because such person is an attorney-at-law. If such were the case, a citizen of Louisiana might obtain a judgment against a citizen of another State, without service or notice, to any amount, upon an entirely groundless and fictitious claim, and the defendant and his property might be forever bound by that judgment, by reason of the officiousness, or possibly the designs or corruption, of some person who might see fit to appear on his behalf. It is certainly obvious enough, that unless the authority of the person who enters his appearance for the unnotified defendant may be called in question, irremediable wrongs might be done, and a door opened to the most monstrous fraud and injustice. But in order to justify a court in decreeing the nullity of a judgment so alleged to have been recovered, it is conceded, that the most clear and conclusive evidence should be adduced. In this case, the complainants have relied upon the testimony of the attorney himself.

That testimony has already been stated by the court, and it cannot but be regarded as the best testimony to the point, which it was possible to obtain. It is clear and unequivocal. He swears that he was never employed, either directly or indirectly, by Lilburne P. Perry, or by any one on his behalf, to appear and defend the suit for him, and that he so appeared through mistake and inadvertence. It is not possible to conceive of any other mode in which the want of authority of the attorney could be made so conclusively to appear. If, then, the attorney had no authority to appear, his appearance was not the appearance of the defendant, and thus a judgment is offered in evidence here, and relied upon as the foundation of the defence, and claim of the respondents, recovered in this court at the suit of Mosely and Bouldin, citizens of Virginia, against a defendant, who was not only a citizen of Missouri at the time of its institution, but was never served with process of citation, who was never notified of the pendency of the suit, and who did not appear to defend the same, either in person or by an attorney duly authorized. This second objection to the validity of the judgment, the court considers a most serious and fatal one.

But again, and in the third place, it is urged by the counsel for the complainants, that the proceedings had under the execution, which issued upon that judgment, by which the marshal undertook to sell the notes and mortgage to Samuel Anderson, are, upon their face, so manifestly illegal, as to render that sale absolutely void, even were the judgment itself a valid one. If this be so, it is obvious that the objection is just as fatal, and the claim of the respondents upon the property, as would be the absolute nullity of the judgment itself. For their claim as much rests upon the legality of the marshal's sale, (which is denied in the bill, and maintained in the answer,) as it does upon the judgment upon which that sale purports to have been made. That there might be no

misunderstanding with regard to this objection, the court has previously recited, verbatim, the marshal's return upon the writ of fieri facias. By that it appears that he advertised the property for ten days previous to his first offer of it for sale for cash upon appraisement, and not obtaining a bid to the amount required by law, to wit, two-thirds of its appraised value, he readvertised (he does not say how long) but probably *ten days* again—at any rate not *thirty days*—because his first [offer] of it for sale, he says, took place on the 10th day of December, 1839, and the final adjudication was made on the 4th day of Jan'y, 1840, on a twelve month's bond for five thousand dollars, to Samuel Anderson.

Now it is clear, that the marshal saw fit to consider the property which he seized as moveable property, for he advertised it for sale *ten days*, the time required by law in the judicial sale of moveable property, whereas in the judicial sales of immoveable property the time of advertisement required by law is *thirty days*.

Upon an examination of the articles of the civil code and the code of practice of Louisiana upon this subject, the court is of opinion, that the marshal was wrong in his proceedings, and that the sale is a void sale, for want of the formalities required by law. What did the marshal seize? Were pieces of paper upon which was written, Samuel Anderson promises to *to* pay to Lilbourne P. Perry the sum of $40,000, and his mortgage of a plantation and slaves, to secure the payment? Certainly not. He seized Lilbourne P. Perry's right to that plantation and those slaves, as evidenced by those notes and that mortgage; what was appraised? The plantation and slaves, and not the mere notes and mortgage. What does the marshal set forth in his act of sale to Samuel Anderson, as having sold to him? Not the notes and mortgage, but the plantation and slaves described in that mortgage, and for which those notes were given. The truth is, the seizure by the marshal was the seizure of an incorporeal right, which is either a moveable or an immoveable, according to the nature of the property to which the right relates, and upon which it attaches. This is so expressly declared by article 461 of the civil code of Louisiana. By article 3249, a mortgage is defined to be a *legal right* upon *immoveable* property. A right upon moveable property, as for instance, a pledge of a horse, of household furniture, or of merchandize, is a moveable. A right upon immoveable property, as of a mortgage upon lands and slaves, is an immoveable.

The conclusion, then, is inevitable in this case, that the marshal made seizure of an immoveable, but in proceeding to make sale of the property which he had seized, he has neglected a most essential formality required by law, in the sale of immoveable property, without which such sale is of no validity whatever; to wit, an advertisement of *thirty days*. This, again, is a most fatal objection to the respondent's claim; for if the sale of the property by the marshal to Samuel Anderson be an invalid one, by reason of a failure

to comply with any of the essential prerequisites of sale, Samuel Anderson took nothing by the adjudication to him, and of course the whole foundation of the respondent's claim is taken away.

These are the objections which the counsel for the complainants have presented to the court to the claim and defence of the respondent, so far as they relate to the validity of the judgment or the legality of the marshal's sale, upon which the same is based. The other points which have been made, the court has also considered, and will proceed to state the conclusions to which it has been led upon them; although they are objections made upon the supposition of the validity of the judgment and the legality of the sale. But for the great importance of the case, and the probability that this decree will be examined by the Supreme Court, this would be unnecessary.

First, then: if the judgment of Moseley and Bouldin be a valid judgment, and the sale a legal one, what was purchased by Samuel Anderson at the sale of the marshal? Why, if the respondents be correct in their answer, and their counsel in the position they have taken, he purchased notes and a mortgage, concerning which, and upon which, a suit was then pending in the district court of the ninth district of Louisiana, sitting in the parish of Madison. He purchased then a litigious right under article 2623 of the civil code, which declares, that "a right is said to be litigious, whenever there exists a suit and contestation upon the same." If this be so, and there would seem to be no doubt upon the point, what are the rights of the complainants or of Lilbourn P. Perry, as against whom that right was transferred by the marshal? These are defined clearly enough by article 2,622 of the civil code, which declares, that he against whom a litigious right has been transferred, may be released by paying the transference the real price of the transfer, together with interest from its date." Samuel Anderson gave for the right his twelve months' bond for the sum of five thousand dollars; then, according to this view of the matter, the sum of five thousand dollars, with interest thereon from its payment, is to be credited upon the amount to Samuel Anderson; as an offset or compensation to which Samuel Anderson has enjoyed the entire fruits of the property ever since his purchase, without molestation, and from the income of which, during the year of the existence of his bond for $5,000, that sum was doubtless paid. Is not this not only the strictly legal, but also the fair and equitable result of his purchase, upon the presumption of the legality of that purchase, and the validity of the judgment? And this leads the court to the second point in this connection, urged by the counsel for the complainants, and which is founded upon the relations in which the parties stood to each other, in the eye of a court of equity.

If the judgment of Mosely and Bouldin be valid, and the proceedings under it legal, what passed to Samuel Anderson by the sale? Samuel Anderson was the vendee of Lilbourne P. Perry—he had

purchased from him and Clayton Tiffin the plantation and slaves in controversy; he had not paid for them, but had given his notes for $40,000, and his mortgage to secure them. At marshal's sale upon a judgment against Lilbourne P. Perry, he purchased these notes and mortgage for the sum of $5,000. Will a court of equity allow him, or those claiming under him with a full knowledge of these facts—nay, whose very claim is avowedly based upon them—to avail himself or themselves, of this enormous discount upon the sum which he had bound himself to pay for the property? Certainly not. In equity, the vendee of land is the trustee of the vendor for the purchase money. He holds the land in trust for its payment. 2 Story, 10 Eq. S. 789, S. 1212, and cases there cited.

Whatever acts are done by the trustee in regard to the property he holds in trust, are in equity presumed to be done for the benefit of the cestui que trust; and the very case which here exists is put as an example *an example* of this doctrine in the authority above cited, in the following words: "Thus, for example, if a trustee should purchase a lien or mortgage on the trust estate at a *discount*, he will not be allowed to avail himself of the difference, but the purchase will be held a trust for the benefit of the cestui que trust." —2 Story, Eq. S. 1211, and cases cited.

This is the doctrine of courts of equity, and is it not a wise and merciful doctrine? Suppose this were not so, what would be the result? Samuel Anderson purchased a property from the complainants, for which he agreed to pay $40,000; he executes his mortgage upon the property to secure that sum; the complainants remove from the State; in their absence the mortgage is seized upon; a judgment recovered against one of them. Samuel Anderson buys in the claim at the sale for one-eighth part of its amount, upon a credit of twelve months; before the expiration of the twelve months the income of the property is perhaps doubly sufficient to pay his $5,000 obligation, and he thus got the property, and his vendors have lost it, without his paying or receiving one dollar. Would not this be most clearly against equity and good conscience? Would it not be a most palpable violation of that moral rule by which courts of equity are guided, which declares that no man shall enrich himself at the expense of another? Upon this point the court entertains no doubt whatever; and even were no other objection made by the complainants to the defence and claim of the respondents, this alone would be sufficient, in the opinion of the court, to justify and require a decree in favor of the complainants.

Again: it is asked by the counsel of the complainants, even upon the supposition of the validity of the judgment against L. P. Perry, and the legality of the sale upon that judgment, and the right of Samuel Anderson thus to purchase, how could this in any manner affect the rights of Clayton Tiffin? Certainly not at all; and the only question is, had Clayton Tiffin any right in those notes and

that mortgage; and, if any, what right? The property was purchased from Clayton Tiffin and L. P. Perry; for aught that appeared to the contrary, they were the owners of the property jointly, in equal and undivided proportions. The notes were given to L. P. Perry, but upon the face of them they are declared to have been given for a plantation and slaves purchased from Clayton Tiffin and Lilburne P. Perry. The mortgage was given to secure their payment to any one being the legal holder and owner thereof; and it further appears that one of the notes for $13,333 was actually transferred, by endorsemeut upon its back, to Clayton Tiffin by L. P. Perry, long before the purchase of Samuel Anderson; and the testimony brings home to Samuel Anderson the full knowledge of that fact. This endorsement was upon the note when it was filed in the clerk's office in the parish of Madison, at the time of the institution of the proceedings by the agent of the complainants for a sequestration; and although those proceedings are in the name of L. P. Perry, he being the original payee of the notes and the mortgage, and the affidavit alleges indebtedness to him. Surely that fact cannot effect, or in any manner impair, the rights of Clayton Tiffin upon the notes or the property; such a result would be unjust in the extreme. If, therefore, the court should have come to a conclusion upon the matters previously considered against the claim of the complainants, such a conclusion, nevertheless, could not have effected the individual rights of Clayton Tiffin, which were not, and could not have been, disturbed by the proceedings against L. P. Perry. But for the reasons which have already been stated, a decree need not be rendered upon this ground.

The defendants in their answer, and then in their argument, have set up the decision made by the judge of the ninth district of Louisiana, sitting in the parish of Madison, in the case of L. P. Perry vs. Samuel Anderson, and have argued, and apparently with seriousness, that this court is concluded by that decision; the facts, as they appear upon the record of that suit, which has been filed here, have already been stated by the court, and it certainly seems to the court that a mere recital of the facts is sufficient to shew the utter groundlessness of this position.

In the first place, that decision was obtained after the question in controversy had been submitted to this court, by the filing of the complainants' bill, and the service of subpœna upon the respondents, and certainly indicates a disposition on their part to forestall the judgment of this tribunal by a decision of the State court; but in the second place it is obvious, by an examination of that record, that the court, by which the decision relied upon was pronounced, had no jurisdiction whatever, either over the parties or the subject matter. There never was any suit instituted upon the notes in that court; a petition of sequestration was filed by the agent of the complainants, and all proceedings were discontinued before service of the process. It is clear, then, that from the date of that discontin-

uance, there were no parties before the court, and there was no controversy upon which it could act; it was, as the record shews, more than a year after this discontinuance, and after Samuel Anderson had made his pretended purchase from the marshal, that he filed his answer to the petition—*an answer to a discontinued action!* This answer set up the claim of Samuel Anderson to the notes, based entirely upon his purchase from the United States marshal of this district, upon the execution against Lilburn P. Perry, which issued from this court in favor of Mosely & Bouldin. The record of the suit of Mosely & Bouldin vs. Lilburne P. Perry is therein filed, and the court is desired to declare and decide that, by force of the proceedings had therein, and of the execution of the judgment by the marshal, Samuel Anderson had become the sole and legal owner of the notes and mortgage, and that they were extinguished upon this answer being filed, as the court has previously stated. Counsel for Lilburne P. Perry appeared and protested against action by the court in the premises, asserting the want of jurisdiction and the discontinuance of the suit. Thereupon, and upon motion of that counsel, it was by the court ordered (Judge Tenney presiding) that the suit be discontinued; and this order makes a part of the record. It might have been reasonably presumed that, after this, no court would have acted in the premises; for there was really nothing upon which it could legally act. There were no parties in court—there was no *lis pendens*—and yet that court, (Judge Curry presiding,) after this bill had been filed, and the respondents notified by subpœna of the pendency of the suit, proceeded, upon the application of the counsel for Samuel Anderson, to render the decision; which was thereupon set forth in the respondents' answer, and which has been urged upon this court as binding upon it in the premises. That decision declares the judgment rendered by this tribunal, on the law side, in favor of Mosely & Bouldin vs. Lilburne P. Perry, a valid judgment, and the proceedings under it legal and regular; and then declares, that by Samuel Anderson's purchase from the marshal of the notes and mortgage, he became their sole and legal owner, and that the debt to Lilburn P. Perry was thereby extinguished. Now, is not the entire want of jurisdiction of that court, both on the subject matter of the controversy, as well as the parties apparent upon every page of the record? What was the matter, concerning which that court undertook to decide? It was the validity of a judgment of the circuit court of the United States, and the legality of the execution of that judgment. Was this a subject upon which the State court could exercise any jurisdiction whatever? It was the obvious duty of that court to have dismissed the parties, upon the ground that the circuit court of the United States, in which the judgment purported to have been rendered, was the proper and only tribunal before which the controversy could be brought. If the marshal's sale of the notes was a legal one, founded upon a valid judgment, the circuit court of the United

States would so declare it in summary proceedings, and order the marshal to deliver them up to the party entitled to their possession.

This is probably the first time that it has ever been seriously contended that a judgment of a State court deciding upon the validity of a judgment of the circuit court of the United States, and the legality of the proceedings upon the execution of that judgment, is binding and conclusive upon that circuit court, in which that judgment was rendered, and from which that execution issued. The court regards this decision of the district court of Louisiana, for the ninth district, as a mere nullity, exhibiting upon its face not only error, which would make it reversible on appeal, but such a palpable assumption of power, by reason of a total want of jurisdiction, both over the parties and of the subject, as to make it, in the language of the Supreme Court of the United States in the case of Voorhees vs. The Bank of the United States, (10 Peters, 449,) *mere waste paper.*

For the various reasons herein set forth, and which the court has been induced to consider at length, by reason of the large amount involved in the controversy, and the consequent probability that a grounds of the decree rendered here would be elsewhere examined, the court has come to the conclusion, which are indicated by the decree—either the respondent, Samuel Anderson, or the respondents claiming under him, have had possession of the property ever since its purchase from the complainants, (now four or five years,) and have received and enjoyed its annual fruits, without having paid the complainants any portion of their just dues. Under these circumstances, it is considered by the court as right, and demanded upon every principle of equitable consideration, that the complainants should be restored to the possession of their property. A reasonable time, however, will be given by the decree for the respondents to pay the amount which is due the complainants upon the property, should they choose so to do, and security required from the complainants for the restoration of the property, should this decree be finally reversed.

Filed, 26 December, 1843.

CLERK'S OFFICE, *United States circuit court, 5th circuit, Eastern district of Louisiana.*

I, Duncan N. Hennen, clerk of the United States circuit court, for the 5th circuit, and eastern district of Louisiana, do hereby certify, that the foregoing three hundred and forty-nine and a half pages, contain a full, faithful, and true transcript of the record and proceedings, together with all the evidence adduced on the trial, of the case of Clayton Tiffin and Lilburne P. Perry vs. Samuel Anderson et als., No. 948, so far as the same now remain on file in the said court, the word "two" erased, and the word "nine" interlined and approved.

In witness whereof, I have hereunto signed my name and affixed the seal of said court at the city of New Orleans, this 5th
[L. S.] day of January, A. D. 1844, and 68th year of the independence of the United States.

DUNCAN N. HENNEN, *Clk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court of the United States for the eastern district of Louisiana, do hereby certify that Duncan *H.* Hennen, who signed the foregoing certificate, is the clerk of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, and was at the time of so doing; and that due faith and credit are due and ought to be given to his acts as such; and that the foregoing certificate is in due form of law.

[L. S.] Witness my hand and seal, this 5th day of January, A. D. 1844.

THEO. H. McCALEB, *U. S. Judge.*

UNITED STATES OF AMERICA, *Ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth
[SEAL] circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, *between* Clayton Tiffin and Lilburn P. Perry, are complainants, and Samuel Anderson, Robert Anderson, Nelson F. Shelton, sen'r, Hilery Mosely, William W. Bouldin, are defendants, a manifest error hath happened to the great damage of the said Samuel Anderson, Robert Anderson, Nelson F. Shelton, sen'r, Hilery Mosely, William W. Bouldin, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 21st of July, in the year of our Lord one thousand eight hundred and forty-three.

DUNCAN N. HENNEN,
Clerk of the United States circuit court and eastern district of Louisiana.

[Endorsed]—United States circuit court, No. 948.

CLAYTON TIFFIN & L. P. PERRY, vs. SAMUEL ANDERSON & al. } Writ of appeal.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this 21st day of July, 1843.

——— ———,
Attorney of plaintiff for appellant.

UNITED STATES OF AMERICA,

Clayton Tiffin and Lilburn P. Perry, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 2nd Monday of January next, pursuant to a petition for an appeal filed in the clerk's office of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, and an order granting the same in a case wherein Nelson F. Shelton is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said plaintiff in appeal, as in the said petition for an appeal mentioned, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 21st day of July, in [SEAL] the year of our Lord one thousand eight hundred and forty-three.

D. N. HENNEN, *Clerk.*
By H. B. PAGE, *Dep'ty clerk.*

[Endorsed]—United States circuit court, No. 948.

N. F. SHELTON, vs. TIFFIN & PERRY } Citation of appeal.

Marshal's return.

Rec'd July 25th, 1843, and on the same day of the month and year served a copy of the within citation of appeal on Alfred Hennen, esq'r, defendants' attorney, by leaving the same at his residence in the hands of J. D. Mix, esq'r.

A. SIDNEY ROBERTSON, *D. M.*

Filed 1844.

1626.

SUPREME COURT OF THE UNITED STATES.

No. 131.

JOSEPH CHAIRES, EXECUTOR OF BENJAMIN CHAIRES, DECEASED, AND PETER MIRANDA AND GAD HUMPREYS, APPELLANTS,

vs.

THE UNITED STATES.

ON APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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J. & G. S. GIDEON, printers.

Before the honorable Isaac H. Bronson, judge of the superior court for the district of East Florida, and specially authorized by law to receive and adjudicate claims and titles to land within said district.

Be it remembered, that on the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-four, Joseph Chaires, executor of the last will and testament of Benjamin Chaires, now deceased, Peter Miranda and Gad Humphreys, by their solicitor, William A. Forward, brought and filed in the clerk's office of the superior court for the district of East Florida, their petition to said court relative to certain lands therein mentioned, which said petition is in the words and figures following, to wit:

Petition to the Court.

UNITED STATES OF AMERICA,
Territory of Florida, ss:

To the honorable Isaac H. Bronson, judge of the superior court in and for the eastern district of Florida.

The petition of Joseph Chaires, of the said Territory, executor of the last will and testament of Benjamin Chaires, late of the same Territory, but now deceased, Peter Miranda, and Gad Humphreys, respectfully sheweth:

That the said Benjamin Chaires, Peter Miranda, and Gad Humphreys, heretofore, to wit, on the eleventh day of May, which was in the year of our Lord one thousand eight hundred and twenty-nine, filed their petition in the office of the clerk of this honorable court in terms of an act of Congress of the United States, entitled an act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, approved on the 23d of May, in the year one thousand eight hundred and twenty-eight, praying for the confirmation of certain claims to lands therein specified, and founded on a title made and granted by his excellency Don Jose Coppinger, lieutenant-colonel of the royal armies of Spain, civil and military governor of the Territory of Florida, then subject and belonging to his Catholic Majesty, the King of Spain, and chief of the royal exchequer of the city of St. Augustine, Florida, to José de la Maza Arredondo.

That the attorney of the United States in and for said district, duly appeared, and answered the said petition; and thereupon such proceedings were had in the said court, that afterwards, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-four, a decree was rendered therein in favor of the petitioners; and the said court did thereupon order, adjudge, and decree, that the claim of the said petitioner was valid, and that, in accordance with the laws and customs of Spain, and under and by virtue of the treaty of amity, settlement, and limits, between the United States and Spain, ratified by the President of the United States on the twenty-second day of February, one thousand

1627.

eight hundred and twenty-one, and under and by virtue of the laws of nations and of the United States, the said claim was thereby confirmed, adjudged, and decreed, unto the said claimant, to the extent, for the number of acres, and at the place specified in the grant for the said land, to Jose de la Maza Arredondo; and as in the certificate and plat of the same, made by Andres Burgevin, dated the fourteenth of September, in the year of our Lord one thousand eight hundred and nineteen, and fully in the said cause is set forth, that is to say—

A piece of land, which contains twenty-thousand acres, situated on both margins of a creek, known as Alligator creek, said land commencing a little above the head of said creek, and embracing an Indian town, distant about eighty miles from the port of Buena Vista, and about forty miles to the northwest of Payne's Town—its first line running north twenty degrees west, three hundred and fifty-seven chains, begins at a pine marked X, and ends at another marked ≡; the second line running south seventy degrees west, five hundred and sixty chains, and ending at a stake; the third line running south twenty degrees east, three hundred and fifty-seven chains, and ending at a pine marked II; and the fourth line running north seventy degrees east, five hundred and sixty chains.

That an appeal was taken from the decree, so rendered in this honorable court, to the Supreme Court of the United States, by the attorney of the said United States, in and for the said Territory, and such proceedings were thereupon had in the said supreme court, that afterwards, on the day of , in the year of our Lord one thousand eight hundred and thirty-six, the decree of this honorable court was affirmed; and thereupon the mandate of the said Supreme Court was awarded, directing the same to be carried into effect.

And your petitioner further shows to your honor, that upon application to the proper officer of the United States, to carry the said decree into effect, by admeasuring to your petitioner the lands specified in the grant, it appears that there is error in rendering the said decree, and that the same requires to be reformed, in this—

That in and by the decree of this honorable court, hereinbefore alleged and affirmed, in manner hereinbefore set forth by the supreme court, your petitioner's claim was confirmed, adjudged, and decreed to be valid "to the extent, for the number of acres, and at the place as in the grant to the said land to José de la Maza Arredondo," but it is added in the said decree, "and as in the certificate and plat of survey of the same made by Don Andres Burgevin, and dated the fourteenth September, one thousand eight hundred and nineteen, and filed herein, is set forth, to wit," &c., &c.; and the said decree thereafter proceeds to recite the metes and bounds as specified and set forth in the survey made by the said Don Andres Burgevin.

That the land granted to José de la Maza Arredondo, and in the decree before referred to confirmed and adjudged to your petitioner, is described in the royal grant or title to property, also before herein referred to, to consist of "twenty thousand acres of land, with title of absolute

property, of those known as Alachua, about *eighty miles* distant from this city (of St. Augustine) at a place known as "*Big Hammock*," about twenty miles from the river *Lavanee* westward, about sixty miles from *St. John's.* While the land specified in the survey of Don Andres Burgevin is described as follows: "twenty thousand acres of land, situated on both margins of a creek known as *Alligator creek.* Said land commences a little above the head of said creek, and embraces an *Indian town*, distant about eighty miles from the post at *Buena Vista*, and about forty to the northwest of Payne's town, &c., &c."

That the land specified in the said survey does not conform to, or correspond with, the land described in the said grant, and that the surveyor-general of the United States has therefore been unable to execute the decree of this honorable court, affirmed as aforesaid by the Supreme Court of the United States, and to admeasure to your petitioner the land adjudged to him by the said decree.

That forasmuch as the land specified in the said grant to José de la Maza Arredondo is, by the decree aforesaid, adjudged to your petitioner, "to the extent, for the number of acres, and at the place, as in the grant for said land," your petitioner is entitled to have the same admeasured to him according to the terms of the said grant, and the desciption therein contained; and that if the said survey of Don Andres Burgevin conflicts with the said grant, the said survey must yield to, and be controlled by, the terms of the grant.

Your petitioner further shews to your honor, that the said land was duly surveyed and admeasured, and a plat thereof made and returned to this honorable court, and given in evidence in said cause, by Joshua A. Coffee, a competent and qualified surveyor, but that the same was omitted in the transcript of the record sent to the Supreme Court of the United States, although the fact of its having been given in evidence appears in the said transcript, a copy of which said survey is hereunto annexed.

Your petitioners further shew to your honor, that the surveyor-general of the United States hath refused to execute the said decree by admeasuring for your petitioner the land thereby confirmed and adjudged to him, and that, upon application to the Commissioner of the General Land Office, he hath in like manner refused so to do, until the said decree shall have been reformed by the competent authority.

Wherefore, your petitioner prays this honorable court, the premises aforesaid being considered, and due proof thereof being made that the said decree may be reformed, and to that end, that a rehearing of the said cause in this behalf may be granted; that the title of your petitioner to the twenty thousand acres of land, specified in the grant to José de la Maza Arredondo may be adjudged to your petitioner according to the terms and specifications of the said grant, and the survey of the said Joshua A. Coffee, a copy whereof is hereunto filed; or according to a survey to be made under the order of this court, by the surveyor-general of the Territory of Florida, in conformity to the description of the said land in the said grant specified and set forth, to be returned into the re-

gistry of this honorable court; and that he may have such other and further relief, as in the wisdom of this honorable court shall seem meet and right in the premises; and your petitioner, &c., &c., &c.

JOS. CHAIRES, *Ex'r.*
P. MIRANDA, and
G. HUMPHREYS.
By WILLIAM A. FORWARD,
Their counsel and att'y.

W. A. FORWARD, *Solicitor.*

Affidavit of J. A. Coffee, annexed to said petition.

Territory of Florida, Duval county, ss.

Personally appeared before me, A. D. Hall, a justice of the peace in and for the county aforesaid, Joshua A. Coffee, who being duly sworn, deposes and says, that some time during the year 1824, at the request of Joseph M. Arredondo, he, the said Coffee, surveyed a certain tract of land, situated in the county of Alachua and Territory aforesaid, in the neighborhood of Fort King, (as now called) containing twenty thousand acres, more or less, called Big Hammock or "Big Swamp;" said tract of land being an absolute and unconditional grant from the Spanish government to the said Joseph M. Arredondo, (as this deponent believes.)

And further, this deponent states, that the plat hereunto annexed is a true and accurate plat of the survey of the said tract of land, as surveyed by this deponent as aforesaid, and is made from his field notes; and that in the survey of the said tract of land, he, the said deponent, employed two chain-bearers, but that he does not know where either of the said chain-bearers now reside.

J. A. COFFEE.

Sworn to and subscribed before me, this 18th day of January, 1844.
A. D. HALL,
Justice of the peace.

Territory of Florida, Duval county:

I, Isaiah D. Hart, clerk of the county court for Duval county, certify that the above named A. D. Hall is a magistrate, duly qualified for said county, and that the above signature, purporting to be his, is genuine.

[L. S.] In testimony whereof I have hereunto subscribed my name and affixed my seal of office, this 8th January, A. D. 1844.

ISAIAH D. HART, *Clerk.*
By OSCAR HART, *D. C.*

[For plat see original.]

Territory of Florida, Duval County:

I, Isaiah D. Hart, clerk of the county court for Duval county, hereby certify, that Joshua A. Coffee, before named, is the county surveyor for Duval county, and that he has been duly elected, and has performed the duties of said office for the last sixteen years; and that the foregoing signature, purporting to be his, is genuine.

[L. S.] In testimony whereof I have hereunto subscribed my name and affixed my seal of office, this 18th day of January, A. D. 1844.

ISAIAH D. HART, *Clerk.*
By OSCAR HART, *D. C.*

Hearing and decision of court.

And afterwards, to wit, on the 27th day of June, in the year of our Lord one thousand eight hundred and forty-four, being a day of June term, in said year, the following decision and entry of record was made in the said cause, to wit:

JOSEPH CHAIRES, executor of the last will and testament of BENJAMIN CHAIRES, deceased, PETER MIRANDA, and GAD HUMPHREYS, cl'ts.
vs.
THE UNITED STATES.

A petition for a rehearing in this cause having been filed by the claimants on the twenty-seventh instant, and a copy and notice of the same having been duly served on the counsel for the United States, and the hearing of the said petition being now moved on by the claimant's counsel, and the same having been read, the counsel for the United States object to a hearing thereon, because the same is not filed within the time allowed by law or the rules of this court for entertaining such petitions; and they insist that they ought not to be called upon to answer the same; and after hearing the argument of counsel thereon, to wit, Messrs. Putnam and Forward for claimants, and Messrs. Douglas and Duval for the United States, it is considered that a petition for a rehearing cannot now be entertained by this court in this cause, and it is ordered that the same be dismissed.

And thereupon the claimant's counsel, in open court, prayed an appeal from the above decision.

Citation of appeal.

And afterwards, to wit, on the ninth day of August, in the year aforesaid, a citation of appeal was duly issued from the office of the clerk of said court, at the instance of the said claimants, and delivered to the marshal of the said district, which said citation of appeal was in the words and figures following, to wit:

The President of the United States, to Thomas Douglas, esquire, attorney of the United States for the district of East Florida, greeting: [L. S.]

You are hereby cited and admonished, that an appeal has been taken from the decision of the superior court for the district of East Florida, to the Supreme Court of the United States, in the matter of a certain petition relative to a change of location of a certain claim to land, wherein Joseph Chaires, executor of Benjamin Chaires and others, are claimants, and the said United States are respondents; and that the record in said cause will be forwarded to the said supreme court, to be placed in the docket of said court, at the next term thereof, to be holden on the first Monday of December next.

Witness the honorable Isaac H. Bronson, judge of said superior court, at the court-house, in the city of St. Augustine, E. F., this 9th day of August, 1844.

GEO. R. FAIRBANKS, *Clerk.*

Served, Aug. 13th, 1844.

JOHN BEARD, *U. S. Marshal.*

SUPERIOR COURT, *district of East Florida:*

I, George R. Fairbanks, clerk of the said court for the district aforesaid, do hereby certify, that the foregoing thirteen pages and ten lines contain a full, true, and complete transcript of the record and proceedings had in the case therein named, under my charge, and that the plat and certificate therein is correctly taken from the said document on file.

In testimony whereof I have hereto set my hand, at the city of St. Augustine, this seventh day of September, A. D. 1844.

GEO. R. FAIRBANKS, *Clerk.*

By the honorable Isaac H. Bronson, judge of the superior court for the district of East Florida, to all to whom these presents shall come, be seen, or made known, greeting:

Know ye, that George R. Fairbanks, who hath signed the foregoing attestation, is clerk of the said court for the district aforesaid; that all due faith and credit are and ought to be given to his acts *as* such, and that the foregoing attestation is in due form of law.

In testimony whereof I have hereunto set my hand and caused the seal of the said court to be hereunto affixed, this 24th day of September, A. D. 1844. [SEAL.]

I. H. BRONSON,
U. S. Judge for dist. of E. Fla.

Filed, 1844.

1630

SUPREME COURT OF THE UNITED STATES.

No. 141.

CHARLES H. CARROLL, COMPLAINANT,

vs.

ORRIN SAFFORD, TREASURER OF THE COUNTY OF GENESSEE, IN THE STATE OF MICHIGAN.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MICHIGAN.

UNITED STATES OF AMERICA, *district of Michigan:*

At a circuit court of the United States for the district of Michigan, held at Detroit on Wednesday, the 4th day of December, A. D. 1844, present honorable John McLean and honorable Ross Wilkins, circuit judges, sitting in equity.

CHARLES H. CARROLL
vs.
ORRIN SAFFORD, treasurer of the county of Genesee, in the State of Michigan.

State of the pleadings.

This was a bill in equity brought by the complainant, a citizen of the State of New York, and who was such at the time of the purchase of the lands set forth in the bill, and has been ever since.

The bill states that the complainant, by purchase from the United States, is the owner in fee simple of certain lands described in said bill, and lying in said county of Genesee, and amounting in quantity to 3,549 71-100 acres, and of the value of $7,500.

These lands were, up to 1836, part of the unappropriated public domain, and subject to entry and sale. The complainant, in 1836, applied to the register of the land office at Flint, in Genesee county aforesaid, for the purchase of them, paid the price of them to the receiver of public moneys, and took a receipt for the same, (commonly called a duplicate,) specifying the payment of the money; the application, entry, payment, and receipt, being according to the usual form of disposing of the public lands, subject to private entry. The register, immediately after the entry of the land, transmitted to the proper office at Washington the patent certificates, as the basis of the issue of patents for the land so entered by the complainant.

J. & G. Gideon, printers.

The complainant, previous to the issuing of the patents for the lands, did not enter into actual possession of them, nor exercise acts of ownership over them.

Patents were issued for this land by the United States on 12th August, 1837, and not before. They were dated on that day, and were shortly after their date transmitted to the register of the land office at Ionia, in Michigan, and subsequently were delivered to the complainant.

The delay in the issuing of the patents, after the entry of the land by the complainant, was not at the request, or in any way by the procurement of the complainant.

The patents declare, that "the United States give and grant" the lands to the patentee.

In the year 1837, and before the date and issue of the patents, these lands were assessed at their full value, and as if owned by the complainant in fee-simple, for township, county, and State taxes, by the proper local officers of Michigan, (having full knowledge that the patents for the same had not issued,) which taxes were not paid by the complainant.

The assessment rolls describe the land as owned by the complainant absolutely, and without any reservation or qualification. The valuation attached to it purported to be its entire value, as an absolute and unconditional estate in fee simple.

By the laws of Michigan, applicable to this part of the case, it is made the duty of the county treasurer to sell such lands as have been taxed, and the taxes on which have not been paid on giving a certain notice. The defendant being then, and now, a citizen of the State of Michigan, as county treasurer of Genesee county, did so sell the lands described in the bill of complaint.

Two years are allowed by law for the person claiming title to the lands to redeem, by paying to the treasurer the tax and charges, and interest at the rate of twenty per cent. per annum.

If not redeemed, the land was to be conveyed to the purchaser in fee simple.

The two years, the period allowed for redemption, had not expired at the time of filing the bill of complaint. The bill prays that the assessment and sale may be declared illegal, and declared void, and that the treasurer of the county may be enjoined from conveying the lands to the purchasers at the tax sale, for other relief.

The following are such extracts from the laws of Michigan as are applicable to the questions now reserved.

Law of April 22, 1833.

"*Sec.* 1. Be it enacted by the legislative council of the Territory of Michigan, that the taxes hereafter to be levied in this territory, shall be assessed, levied, and paid in the manner hereinafter mentioned, upon a valuation of real and personal estate, including property and stock in any bank, insurance company, or other incorporation, to be made as hereinafter prescribed.

"*Sec.* 2. The assessors of each township may divide their townships by mutual agreement into such number of districts, to be called assess-

ment districts, as they may deem convenient, not exceeding the number of assessors in any such township; and in every year, between the fifteenth day of April and the first day of May, shall individually, in their assessment districts, according to the best evidence in their power, make out a list or schedule of all the taxable property in the same, and bring the said lists or schedules together, and jointly value the property named in each, and set down in their assessment roll the value of buildings and lands in such township, owned or possessed by any person residing in such township, or any banking or insurance company, or other incorporation situated in such township, opposite the name of such person or corporation; and shall also ascertain and set down in their said assessment rolls, in like manner, the value of all the personal estate, of every such person; and in case any person, not satisfied with such valuation, shall make oath before such assessor, or either of them, who are hereby authorized to administer such oath, that the value of his or her real or personal estate, does not exceed a certain sum, specifying the same, then and in every such case, the assessors shall value such real and personal estate at the sums specified in such affidavit, and no more; and every person liable to be taxed for any personal estate as aforesaid, shall be taxed for the same in the township where such person shall reside at the time of making such assessment; and the assessors shall also ascertain what lands are situated in their townships, not owned by persons residing in such townships, and shall, in their assessment rolls, separate from the assessments made, the estates of non-residents, and designate such land in the following manner: if the estate be a patent or tract of land of the subdivision of which the assessors cannot obtain correct information, they shall enter the name of the patent or tract, if known by any particular name, without regarding who may be the owner thereof; and if such tract be not known or designated by any particular name, they shall state by what other land the same is bounded, and shall set down the quantity of land contained therein, and the value thereof, in the proper columns for that purpose; and the assessors shall complete their assessments on or before the first day of May in every year, and make out a fair copy thereof to be left with one of the board, and thereupon cause notices to be put up at three or more public places in their township, setting forth that they have completed their assessment, and that a copy thereof is left with one of them, naming him, where the same may be seen and examined by any of the inhabitants during ten days; and that at the expiration of the said ten days, they shall meet on a certain day, at a place in the said notice to be specified, to review their said assessments, on the application of any person conceiving himself aggrieved; and it shall be the duty of the said assessors, with whom the said assessment roll shall be left as aforesaid, during the said ten days, to submit the said roll to the inspection of any person who shall apply for that purpose; and at the said time and place, the said assessors shall meet, and, on application of any person conceiving himself aggrieved, shall review the said assessment, and may alter the same, on sufficient cause being shown, to the satisfaction of the said assessors, or a majority of them;

and the assessors, or a majority of them, shall make oath or affirmation, and attach the same to the said assessment roll in the following, or other equivalent form, to wit: 'We do severally swear (or affirm) that the sums at which property is assessed in the foregoing assessment roll, are according to our best judgment the fair cash value of such property.'

"Sec. 9. The person in possession of any real estate, at the time any tax is to be collected, shall be liable to pay the tax imposed thereon; and in case any other person, by agreement or otherwise, ought to pay such tax, or any part or proportion thereof, the person who shall pay the same, shall and may recover the amount from the person who ought to have paid the same; and all taxes upon any real estate shall be a lien thereon, and shall be preferred in payment to all other charges; and all taxes upon any personal estate shall, in case of the death or bankruptcy of the person taxed, be preferred in payment to all other demands."

"Sec. 14. Any tax heretofore laid by virtue of any law of this territory, or to be laid by virtue of this act, upon any real estate, and the interest and charges thereon, shall be a lien upon the same real estate, until the same tax, interest and charges, shall be paid or recovered, notwithstanding the same real estate may have been divided or aliened, in the whole or in part; and whenever such tax, and the interest aforesaid accruing thereon, shall remain unpaid for two years from the first day of May, following the year in which any such tax was or shall be laid, the treasurer of the proper county shall cause so much of the land charged with such tax and interest, to be sold at public auction, at the court house of the county where such lands are situated, to the highest bidder, as shall be necessary to pay the said tax and interest, together with all charges thereon, first giving at least four months notice of the time and place of sale, by advertisement, posted up in three or more public places in said county, and also, by causing a copy thereof to be published, in one or more of the public newspapers, printed or in circulation in said county."

"Sec. 15. On the day mentioned in the said notice, the treasurer shall commence the sale of the said lands, and continue the same from day to day, until so much thereof shall be sold as will pay the taxes, interest, and charges due, assessed and charged thereon as aforesaid; and the treasurer shall give to the purchaser or purchasers of any such lands, a certificate, in writing, describing the lands purchased, and the sum paid therefor, and the time when the purchaser will be entitled to a deed for the said lands; and if the person claiming title to the said lands, described in the said certificate, shall not, within two years from the date thereof, pay the treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in such certificate, together with the interest thereon, at the rate of twenty per cent. per annum, from the date of the said certificate, the treasurer shall, at the expiration of the said two years, execute to the purchaser, his heirs or assigns, a conveyance of the lands so sold, which conveyance shall vest in the person or persons, to whom it shall be given, an absolute estate in fee simple, subject to all the claims which the Territory of Michigan shall have thereon,

and the said conveyance shall be conclusive evidence that the sale was regular, according to the provisions of this act; and every such conveyance to be excuted by the treasurer, under his hand and seal, and the execution thereof witnessed and acknowledged in the usual form, may be given in evidence and recorded, in the same manner, and with like effect, as a deed regularly acknowledged by the grantor, may be given in evidence and recorded."

The bill of complaint further shews, that by the act of Congress entitled, "an Ordinance for the government of the territory northwest of the river Ohio, passed on the thirteenth day of July, A. D. one thousand seven hundred and eighty-seven, it is provided, that the legislature of those districts or new States within said territory, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in said soil to the bona fide purchaser; that no tax shall be imposed on lands, the property of the United States, and in no case shall non-resident proprietors be taxed higher than residents. That by the law of Congress providing for the admission of the State of Michigan into the Union, upon the conditions therein expressed, passed on the fifteenth day of June, in the year one thousand eight hundred and thirty-six, it is provided that nothing in the said act 'contained, or in the admission of the said State into the Union as one of the United States of America, shall be construed or understood as to confer upon the people, legislature, or other authorities of the said State of Michigan, any authority or right to interfere with the sale by the United States, and under their authority, of the vacant and unsold lands within the limits of the said State; but that the subject of the public lands, and the interest which may be given of the said State therein, shall be regulated by future action between Congress, on the part of the United States, and the said State of Michigan shall in no case, and under no pretence whatever, impose any tax, assessment, or imposition of any description, upon any of the lands of the United States within its limits,' all of which restrictions and injunctions were assented to by the People of said State of Michigan, assembled in convention, and afterwards by the legislature of said State."

The bill was filed in one thousand eight hundred and forty-two, and has been taken as confessed, and a motion has been made for a decree according to its prayer—That the said defendant and his successors in office may be enjoined from granting any deeds, or other conveyances on any certificates of sale granted for any of the lands above described, which have been sold for taxes thereon, assessed in the year one thousand eight hundred and thirty-seven; and that the said certificates be given up to be cancelled, and the sale set aside; and that the defendant and his successors in office, and all others who may be made defendants as the holders of said certificates, may be decreed to release to the complainant, any rights, which they, or either of them, may have or claim to said lands, or any part of the same, on account of said assignment and

sale; and that the title of the complainant may be quieted as against any claims growing out of said assessment and sale.

On this motion for a decree there occurred, as questions,

First. Whether the statutes of the State of Michigan did, in fact, authorize the assessment and sale of the lands in question, and whether said statutes were intended to direct the assessment for taxation of lands of the United States before the patents for them had been executed by the officers of the United States.

Second. Whether the lands in question were, before the date and execution of the patents for them, subject to taxation at all, by the State of Michigan?

Third. Whether, if they were subject to taxation by the State, before the execution of the patents for them, it was competent to assess, and tax and sell them, as the absolute property of the complainant, and at their full value, as if he owned them in fee?

Fourth. Whether the remedy by bill in equity, and the relief sought, are proper?

On each of which questions the opinions of the judges were opposed:

Whereupon, on a motion of the complainant, by his counsel, that the points on which the disagreement happened, may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided.

It is ordered, that the foregoing statement of the pleadings, facts, and questions of difference be certified, according to the request of the complainant, by his counsel, and according to the law in that case made and provided.

UNITED STATES OF AMERICA,

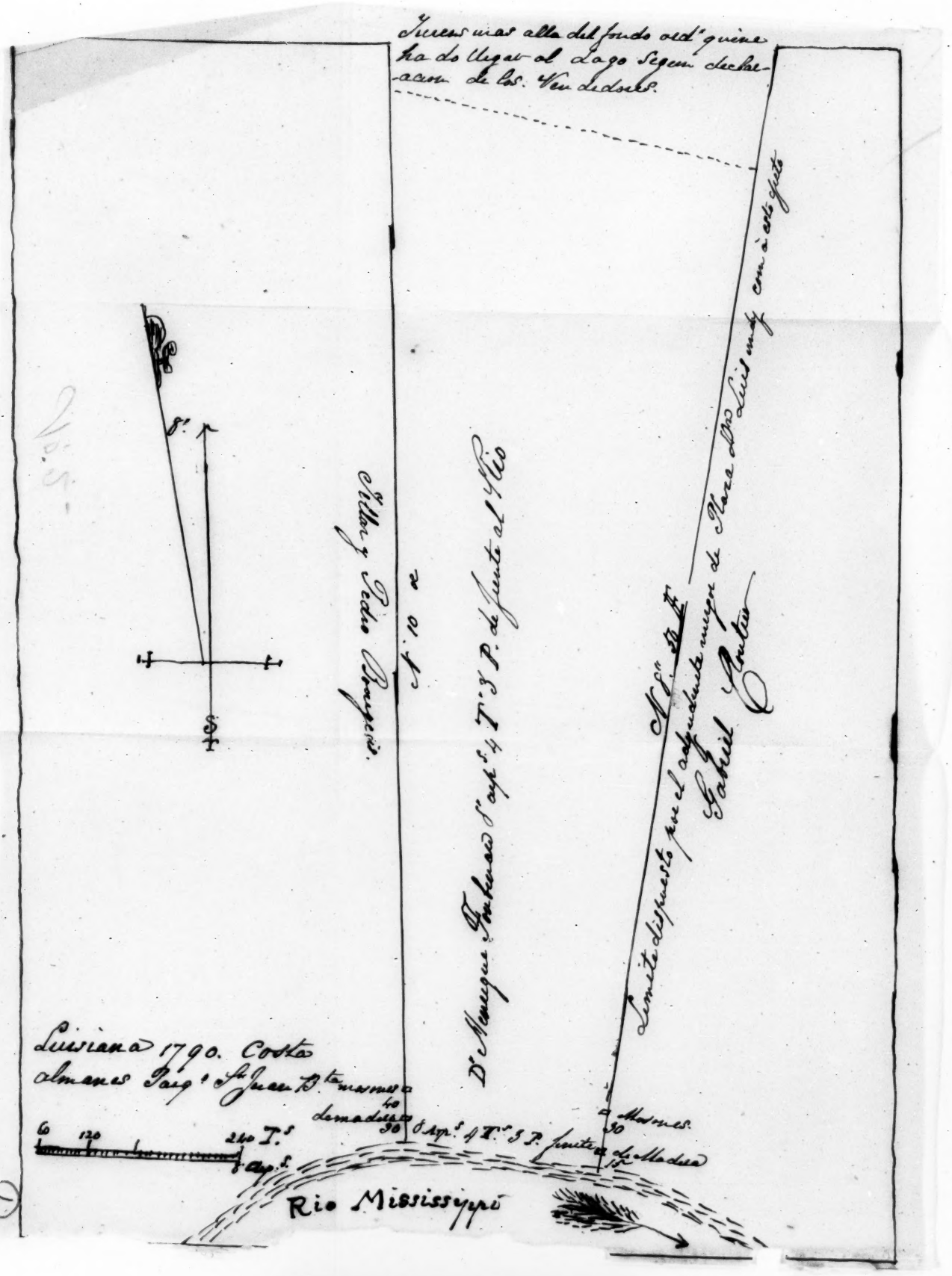
District of Michigan, ss.

I, John Winder, Clerk of the Circuit Court of the United States for the District of Michigan, do hereby certify the foregoing to be a copy from the files and records of this case.

Given under my hand and seal of office, at Detroit, on the fourth
[SEAL.] day of November, A. D. one thousand eight hundred and forty-four.

JOHN WINDER, *Clerk.*

Filed 9th Dec'r, 1844.


Juzgues mas alla del fondo del q.e viene
ha de llegar al Lago segun declara-
acion de los Nauadores.
Villar y Pedro Bauges.
N.° 10 a
D.n Manuel Perdomo Capt.n y T.e 3.° P. de Junta al N.te
Limite dispuesto por el adjunto mayor de Plaza D.n Luis Init.e con el ante ffato
Gabriel Antonio
Luisiana 1790. Costa
Rio Mississippi

Amite River

Galvestown

Iberville River
or Bayou Manshac

Acadian Bayou

Mississippi River

Hiers of Conway's
Claim

Amite River

Branch of Acadian Bayou

Acadian

Lake
Maurepas

Amite River

John Mc Donough

Branch of Acadian Bayou

Acadian Bayou

Bayou

Bayou

John Mc Donough

Amite and Tickfaw

Tickfaw River

Mississippi River

Côte Dacadie Rive gauche du Mississippi Paroisse St. Jacque

Mr. Christophe Manga

17 mille 226 perches

No. 1. 5295 ± arpens

4983 acres

Antoine Reggio Mr. J. Medonegt & Compagnie

17 mille 220 perches

Eastern Shore of Maryland, Louisiana

Company. Mr. J. Medonegt & Compagnie

N. 35° W.

N. 34° W.

N. 2, 31.371½ arpens 28.473 acres

N. 19° 30' W. 17 mille 20 perches

Mississippi

Mr. P. Le Bourgois

Mr Medonegt & Compagnie

N. 8° E.

No. 3. 46.010⅔ arpens 43.135 acres

18 mille 32 perches

Mr. Alphonse Waydelon Fontenau

B. Acadien

Amite River

Lac

L. Pontchartrain

Prince de Conti

Chene Fourché

(3)

(4)

Antoine TREGUE

N. 34°. O.– 80. Arp.

EASTERN SHORE of MARYLAND LOUISIANA COMPANY.

J. M'DONOGH, et S. BROWN.

Mississippi

English Acres or Fathoms

Cipriere Haute

Cipriere Basse.

Bayou

Terre basse

Chêne Rouge

Cipres

Frêne, servant de Borne.

Borne plantée Par M. Pelicier.

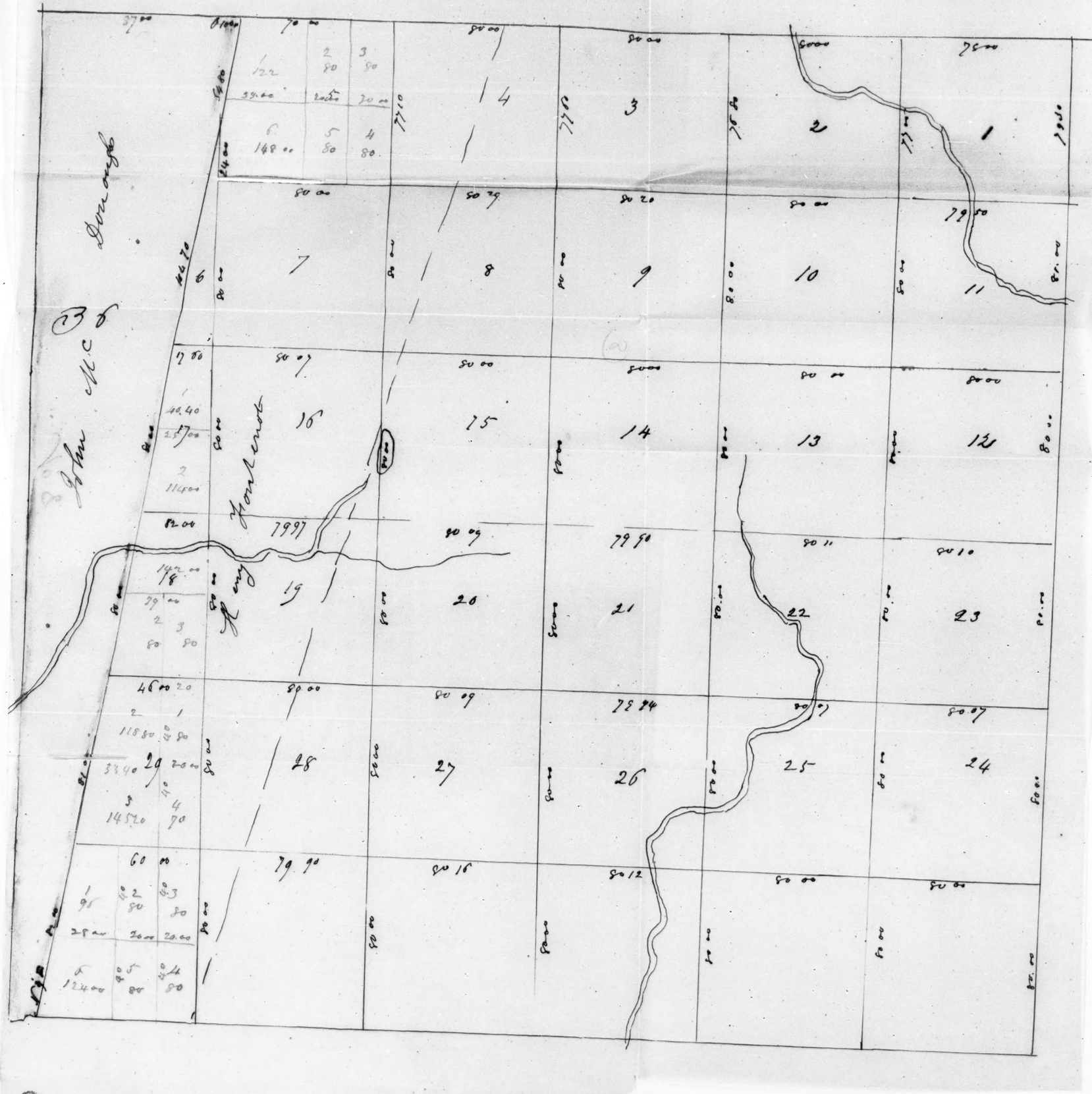


Table of Contents

Sec	areas	Sec	areas	Sec	area	Sec	area
1	617 55	10	640 00	19	639 84	28	659 20
2	615 20	11	638 00	20	640 72	29	424 00
3	617 00	12	640 40	21	639 36	30	540 00
4	68 80	13	640 40	22	640 72	31	639 20
5 6	590 05	14	639 20	23	640 04	32	640 64
6	91 78	15	640 32	24	640 24	33	640 48
7 8	640 00	16	640 16	25	640 84	34	640 00
8	641 13	17	194 40	26	640 24	35	640 00
9	640 80	18	312 00	27	640 98		

Claimant's Names	entry No	Sec No	area
John McDonough	408	36	2464 00

(6)

Township N 10 of Range N 5 East

Ground Bayou

80.00 | 80.00 | 80.00 | 80.00 | 80.00 | 77.00

80.00

80.00

80.00

John Mc Donough

Section N° 1.

2

3

4

Bayou A Ca Rip

Table of Contents

Claimants names	Cert	Sec	area
John McDonough	406	1	219[illegible]7.68
		2	4[illegible]72
		3	330.00
		4	660.80

(2)

11A

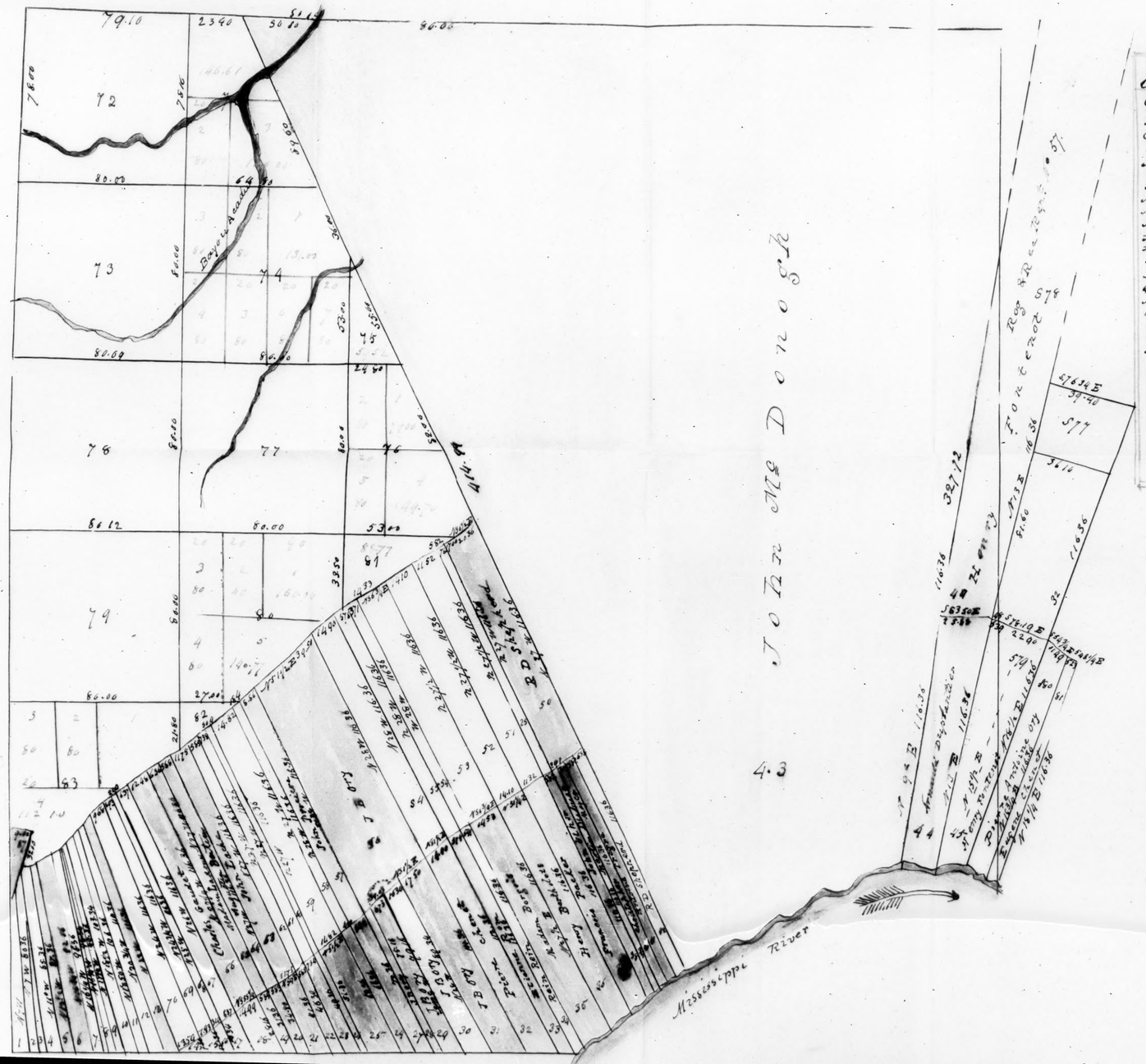
T 11 R 5 E

South Eastern District Louisiana

Table of contents

Sec	Area	Sec	Area	Sec	Area
1	24 50	59	24.50	77	640.00
2	30 66	60	30.00	78	648.72
3	7 65	61	60 62	79	640 96
4	51 60	62	51.00	80	516 77
25	77 88	71	376.84	81	88 77
51	151 31	72	616 48	82	29. 43
52	102 40	73	646.00	83	392 10
53	164 44	74	611 68	84	165 41
55	64 44	75	59 52	85	64.00
58	46 54	76	388. 70	Total area	6833 16

Claimants Names	Cert.	Sec	Area	Claimants names	Cert.	Sec	Area
George Meather	390	87	27.90	Adam Seckenidre		70	154.01
John Le Bourgeois	138	5	2634	Etienne Rein	320	33	69.00
Edward Bourgeois	137	6	7256	Rein Rein	320	34	1618
Madam R Lasseine		7	58.63	Madam Bourgeois	50	35	165.98
Madam Paul Seckenidre		8	21.83	Henry Berthely	29	36	163 21
Jn Derbille		9	9.76	Francois Pache	43	37	131.5
Prime Paul Bourgeois		11	62.88	John Vahn	189	38	64.16
Madam Jos Bourgeois		11	52.24	Martin Dutburg	116	39	32.64
Madam Jsaac Jellane		12	42.47	Christph Mayer	217	40	53.44
Paul Bourgeois	136	13	9.60	Antoine Fragre	226	41	67.72
Adam Stekenidre		14	12.67	R Jr Shepherd		42	99.83
Adam Seckenidre		15	8.24	John Mc Donough Rept	466	43	987.539
J B Relin		16	4.28	Arnauld Duplanty		44	253.66
Adam Seckenidre		17	13.46	Henry Fontenot	37	45	183.10
Charles Gaudet		18	23.68	Pierre Antoine Dry		46	16.19
Madam Landre	137	19	1858	Eugene Chenette		47	3.79
Augustin Bertin	137	20	14.28	Henry Fontenot		48	4.30
John Laske	204	21	43.21	L Fontenot	37	49	102.77
Michel	185	22	25.47	L Shepherd	49	50	204.93
Madam R Byrne	184	23	45.70	Rein Rein		54	66.16
J Curreau	184	24	18.79	J B Dry	18,186,187	56	469.12
J Decureaux	191	26	31.58	John Porcum	195	57	111.29
John Saccene	65	27	60.49	John Porcin	186	63	136.03
J B Dry	185	28	18.43	Augustin Bertin	198	64	68.01
" " Dry	212	29	60.97	Madam Lafons	190	65	76.73
" " Dry		30	98.32	Charles Gaudet	307	66	156.21
" Pierre Chenette	132	32	140.60	Adam Seckenidre		67	76.05
				J B Kellen		68	20.54
				Adam Seckenidre		69	8.42


79.10
2340
80.00
76.00
72
73
74
75
76
77
78
79
80.00
64.80
80.00
80.00
80.00

Côte Dacadie Rive gauche du Mississipi Paroisse St Mary

Mr. Christophe Maya

Eastern Shore of Maryland, Louisiana Company. Mr. I. Medonogh & Compagnie

No. 1. 5295 ½ arpens 4983 acres

17 mille 296 perches

17 mille 220 perches

Antoine Bourg Mr. I. Medonogh & Compagnie

N. 35° Mr.

N. 34° Mr.

No. 2. 30.37½ arpens 28.473 acres

N 19° 30' Mr. 17 mille 20 perches

Mr. Pr. Le Bourgois

Mr. Medonogh & Compagnie

N 30. E

No. 3. 46.010 ½ arpens 43.135 acres

18 mille 32 perches

Mr. Alphonse Haydel ou Fontenau

Mississipi

Fme de Mr

Bte Chaine

L. Bonaire

chaine d'arpt

Rivière Amite

B. Acadien

Lac

Louisiana Pgo distrito de Pabanosc

10 Lugue Pgo Carlos Trudeau.

Terreno excelente de la Señora de
Familie Dupare -
N. 17° 10' O. 400 Pas

Pedro Leborgeois Compr de Dn Nicolas Armont
833/3 Arpanes quadra

Pedro Lebourgeois Segunda Profundidas
Otorgada por decreto del dia 19 Henero 178[illegible]

N. 72. E. 400 Pasos

Mississipi

Henrique Fontno

N. 50. E. 400 Pas

Vacante

SUCESSION

Nº 271

Nicolas Mathone Costa Headlands

N. 35.ª 10.' Este

D Limite superior comun con tierra de Nicolas Mathone

Dr Francisco Dupare
Heredero

1ra porcion

Limite provisional Tomado por Jose Francisco Dupare

Direccion del rumbo correspondiente al Limite provisional

El Mulato Alexandre Lange comprado de W. Manderille

2da porcion

Limite provisional Tomado por Felipe Pankerne

Rumbo correspondiente

Felipe Pankerne Comprado del mulato Alexandre

2da porcion

Tomado por el mulato Alexandre Lange

Limite provisional

R 20° 30' R

Rumbo correspondiente al Limite provisional

Limite con el rumbo correspondiente a la tercera parte del repartimento N. 17 pags 10 &

Segun las de los vendedors la

Pedro Lebourgeois Compro

3ra Parcion

y Rumbo correspondiente a l del Repartim

Limite y

184 Ts

30 Ts

30 Ts

130 Ts

55 Ts

35 Ts

23 Ts

32 25

93 Ts

180 Ts

5 10 15 20 2 3 4 5 arpents en 150

Luisiana año 1796. Costa Alemanes Baroque San Juan Bta Barrio Llamado la Vacherie

Rio San Luis

Segun las de los vendedores la profondidad deve llegar al Lago. por averle assi comprado de los Indios

N D E D N F R A N C I S C O D U P A R C.

Nº 271

Pedro Lebourgeois compro de Mr Arnoul y de los Herederos Delille

3ra Parcion

4 to Porcion

5.a Porcion

y Rumbo correspondiente a la segunda Oporcion del Repartimiento

limite del tomado por Henrique Fontene

limite provisional

limite del Repartimiento correspondiente a la primera porcion N. 50 minutos E.

Henrique Fontene comprado de Madame Macnamara en Dec.re 14 de 1784

Limite inferior comun con la tierra Guillo Cloutier N. 99 gds. 50 m. E. sin atender a la variacion

Guillo Cloutier.

180 Ts

215. Ts

36 gds

40 Ts

245. Ts

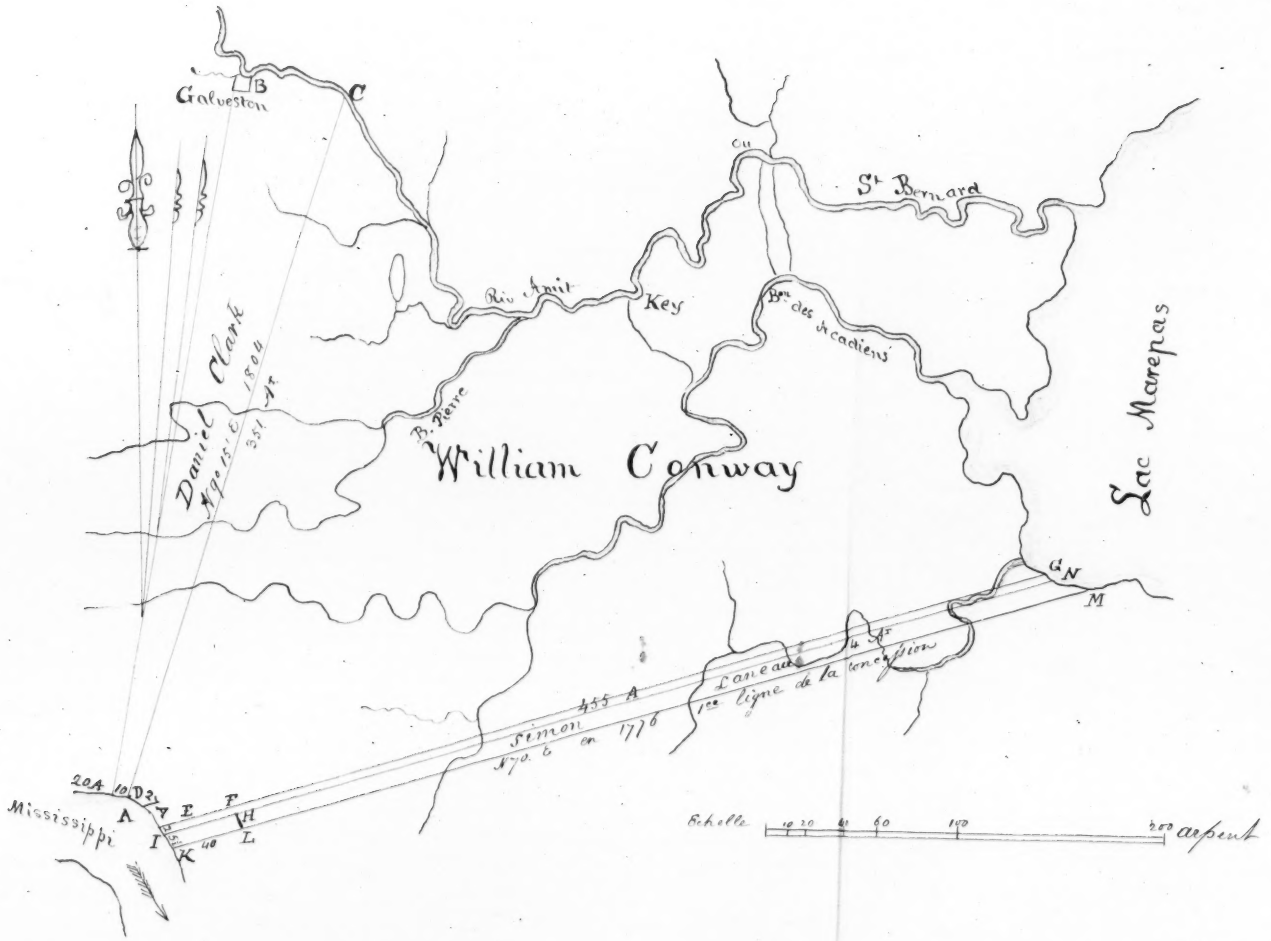
Rio San Luis → O Misisipi

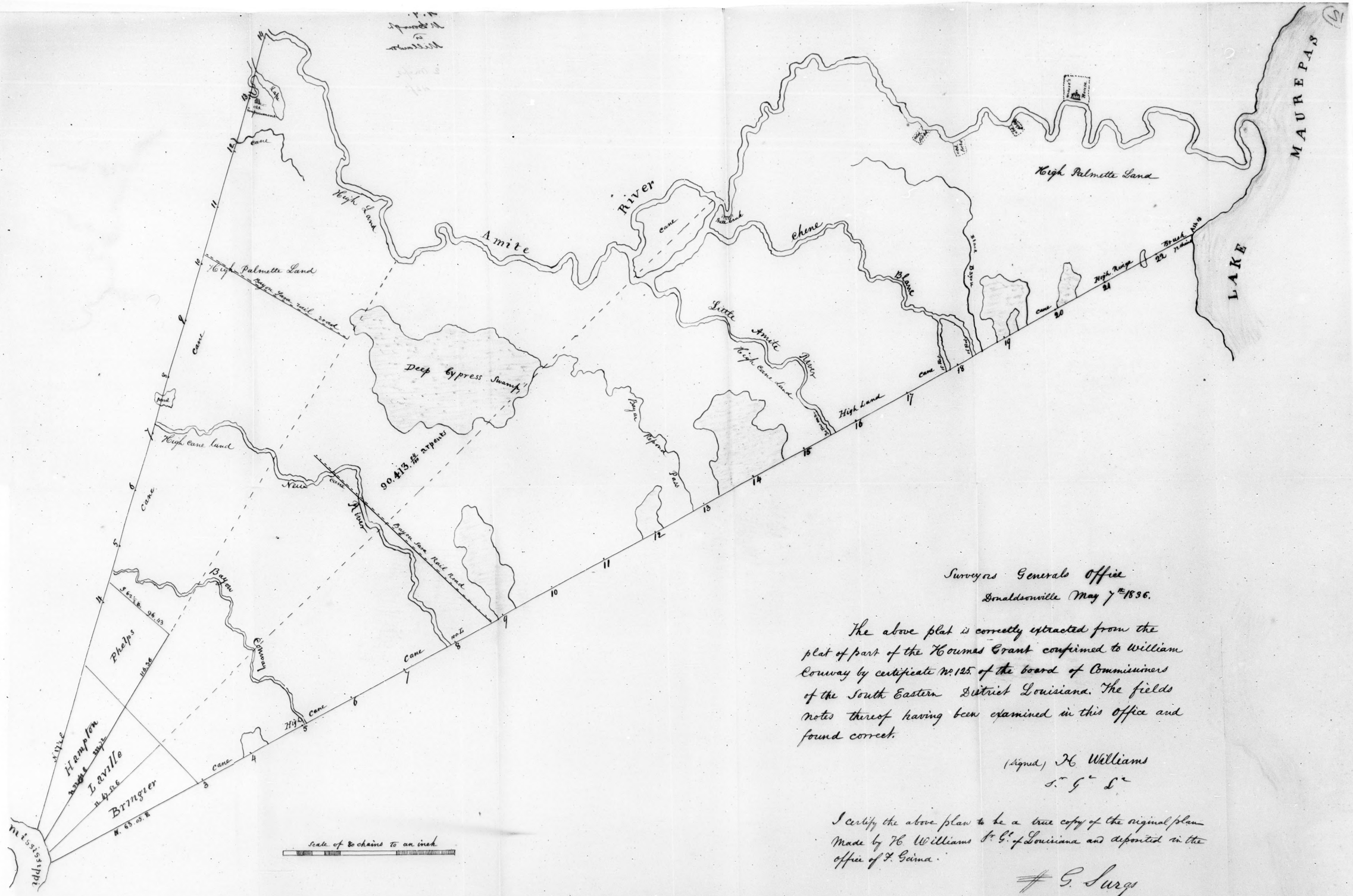
11

No 9.
Mr Bacot
à
Milland

pièce 28 Nov. 1844

Comté de la côte de Acadie.





Surveyors Generals Office
Donaldsonville May 7th 1836.

The above plat is correctly extracted from the plat of part of the Houmas Grant confirmed to William Conway by certificate No. 125 of the board of Commissioners of the South Eastern District Louisiana. The fields notes thereof having been examined in this Office and found correct.

(Signed) H Williams
S.r G.l L.a

I certify the above plan to be a true copy of the original plan Made by H Williams S.r G.l of Louisiana and deposited in the office of J. Gaines.

G. Surgs
inspector of public works L. Ms

References—

A. B. C. D. Survey entered by William Croghan assignee for 1000 acres August 2d 1784. on part of Military warrant No. 2023

A. Beginning Station, Walnut Swat Gum and Ash the orginal corner trees all found as Called for in the Pattent—

B. The second corner Call.d for in the pattent found a Red bud, Box Elder and Swat Gum marked as a corner & an Ash fallen and partly rotten—

C. This corner on the bank of the river timber all cut and destroyed, no marks as Call.d for in the pattent

D. The mouth of Mayfield one cottonwood and Walnut mark.d as Call.d for in the pattent

Surveyed October 1841 by
Horatio Ball

N. B. The Red line dotted represents the entry & would include 1181 Acres—

Island No. 1

Island Chute

Henry Chappell

Jno. Edwards Elizabeth Chappell

Mayfield Creek

Sec. 36.4.

N.E. 10.5.4

S.E. 10.5.4

Puntney

N.E. 15.5.4

Wm. Campbell

Sally Edwards

Puntney

S.W. 15.5.4

S.E. 15.5.4

Puntney

Bayou

Mississippi River

N. 14 & 69 50 p.

Adams State

Nelson

R. Adams

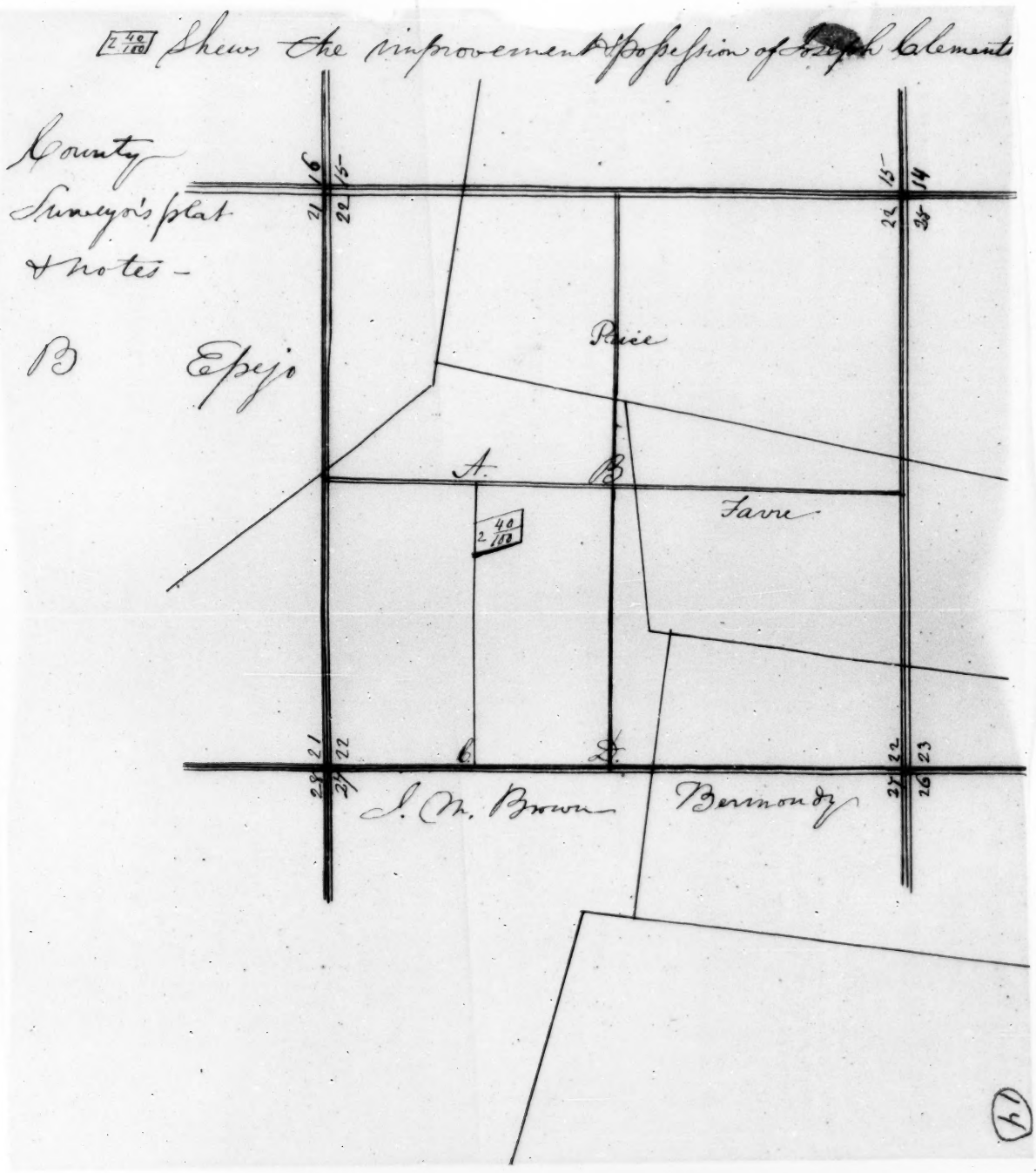
A

B

C

D

2 40/100 Shews the improvement & possession of Joseph Clements



(12)

4 Acres

2 Acres.

58 40 39 26

52 41 38 27 25

51 49 37 28 24 23

50 43 36 29 21 22

49 44 35 30 20 19 18

48 45 34 31 15 16 17

47 46 33 32 14 13 12 11

Seventh Street

Sixth Street

Erie Street

Fourth Street

Bridge Street

Second Street

Reserved by the Proprietors

Place for Bridge

Monroe

Washington

Adams

Jefferson

Madison

Market Space

State's Reservation at the mouth of the United States Line and the West Line of the Lots

10 9 8 9 6 5 4

(12)

Reserved by the Proprietors

Seventh Street

Sixth Street

Erie Avenue

Fourth Street

Second Street

Front Street

Monroe Street

Washington Street

Adams Street

Jefferson Street

Madison Street

Bridge Street

Market Space

Swan Street

Commercial Avenue

Place for Bridge

Basspoint

SWAN CREEK

MAUMEE RIVER

Promenade

For Military Purposes

1 East

Northern Western Boundary of the United States Reservation from the Rapids

MAP of PORT LAWRENCE

St Clair

Michigan

Superior

Market Space

Huron

Ontario

Erie

Water

Swan St

Street

Washington

Monroe

Jefferson

Madison

Adams

LaFayette

SWAN CREEK

MAUMEE RIVER

Note at a meeting of the Town Proprietors on the 22 day of July 1835 the Lots 329 to 340 were marked on this Map and have not been received

Wisconsin Street

Missouri Street

Erie and Kalamazoo Rail Road

Rail Road

Forrer

Vance

Line between Tracts 2 and 3

Profile of Canal

Wabash and Erie Canal

Indiana Street

Lucas Street

Wabash Street

Michigan Street

Ontario Street

Erie Street

Huron Street

Monroe Street

Market Space

Washington Street

Lafayette Street

St Clair Street

Superior Street

Jefferson Street

Canal

Cut

Toledo Side Cut

Terrace

Court House Square

State Street

West Street

Williams

Middleton

Webster

Harrison

Swan Creek

Lock No 1

Lock No 2

Lock No 3

Lock No 4

Lock No 5

8 ft Lift

9 ft Lift

W. Oliver

M. J. W.

7

of Tract 7

16th St.
14th St.
12th St.
10th St.
15th St.
13th St.
11th St.
Oak St.
Adams St.
Street
Canal
Michigan
Ontario
Jefferson
Madison
Monroe
Market Space
Huron
Washington
Superior
St Clair
Erie
Lafayette
Indiana
Lucas
Wabash
and Erie Canal
Summit
Water
Terrace
Court
Side
Cut
Toledo
RIVER MAUMEE
W. Oliver M.S.W.

Rail Road

Forrer

Lucas

Vance

Wabash

Line between Tracts 2 and 3

Profile of Canal

Erie and Wabash Canal

W. Oliver
M. J. W.

Line between Tracts 3 and 4

Swan Creek

Lock No 1
Lock No 2
Lock No 3
Lock No 4
Lock No 5

Side Cut

Washington
Market St
Lafayette
St Clair
Superior
Jefferson
Erie
Toledo
Side Cut
Terrace
Court
Court House Square
West
Williams
Whitmore
Whitney
Webster
Oliver
Clayton
Ottawa
Jefferson
Main
Monroe
Summit
Michigan
Huron
Perry
Water
Front
Cherry
Madison
Jackson
Adams
Lenawee
Fulton
Lagrange
Division
Walnut
Locust
Chestnut
Pine
Vine
Elm
Spring
Union
Ash
Hickory
Maple
Sycamore
Cedar
Plum
Oak
Beech
Dorr
Hill
Grove
Cass
Lincoln
Logan
Scott
Hamilton
Clinton
Wayne
Harrison
Taylor
Polk
Van Buren
Fillmore
Pierce
Buchanan
Jackson
Monroe
Madison
Jefferson
Adams
Lenawee
Fulton
Lagrange
Division
Walnut
Locust
Chestnut
Pine
Vine
Elm
Spring
Union
Ash
Hickory
Maple
Sycamore
Cedar
Plum
Oak
Beech
Dorr
Hill
Grove
Cass
Lincoln
Logan
Scott
Hamilton
Clinton
Wayne
Harrison
Taylor
Polk
Van Buren
Fillmore
Pierce
Buchanan

Oliver's address page 199

MAP
of
TRACTS
Two Three and Four
as
SUBDIVIDED

Scale 200 ft to an inch

Indiana Street
Lucas
Wabash
Street
Erie
Lafayette
Washington
Market Space
Monroe
Jefferson
St Clair
Summit
Water
Front
Court
Cut
Toledo
Side
Terrace
Court House Square
Lock No 1
7ft Lift
West
Williams
Whittlesey
Webster
Clayton
Ottawa
Oliver
Harrison
Maple
13th
11th
M. J. W.
MAUMEE RIVER

Archibald Lyons 600 Acres

William Brown 600 Acres

Whitmore Knaggs 500 Acres

Samuel Ewings 500 Acres

John [illegible]

Godfrey E Bourgraad No 582 640 Acres

Godfrey E Bourgraad No 595 225 Acres

Pettysburg

United States Road

II

III

I

IV

Explanations

Those portions coloured Green are paid in full

Those coloured Yellow are sold not paid for.

Those coloured Blue have reverted

Those coloured Red are relinquished

Those coloured Brown are granted to the State.

(81)

C

B

Point in Mrs Anderson's Field

D

E

L

K

John Mayo 5000 acre survey

Magnetic meridian

True Meridian Variation 4 East

A

M

S12; W848 P.s

N

Mayo & Cardy 3500 acre Survey.

1033 poles

S78° E 754 & 8 P.s

S78° E

S13½ W

F

Reuben Bennett

G

H

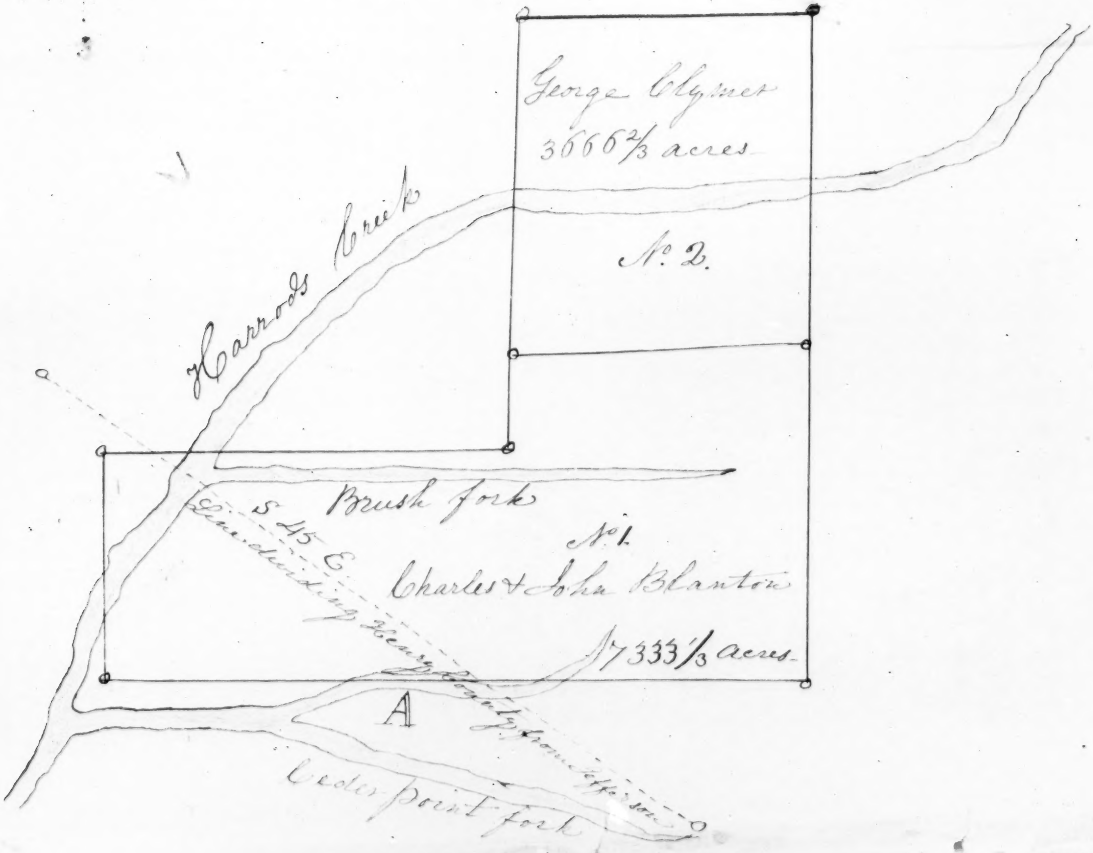
J

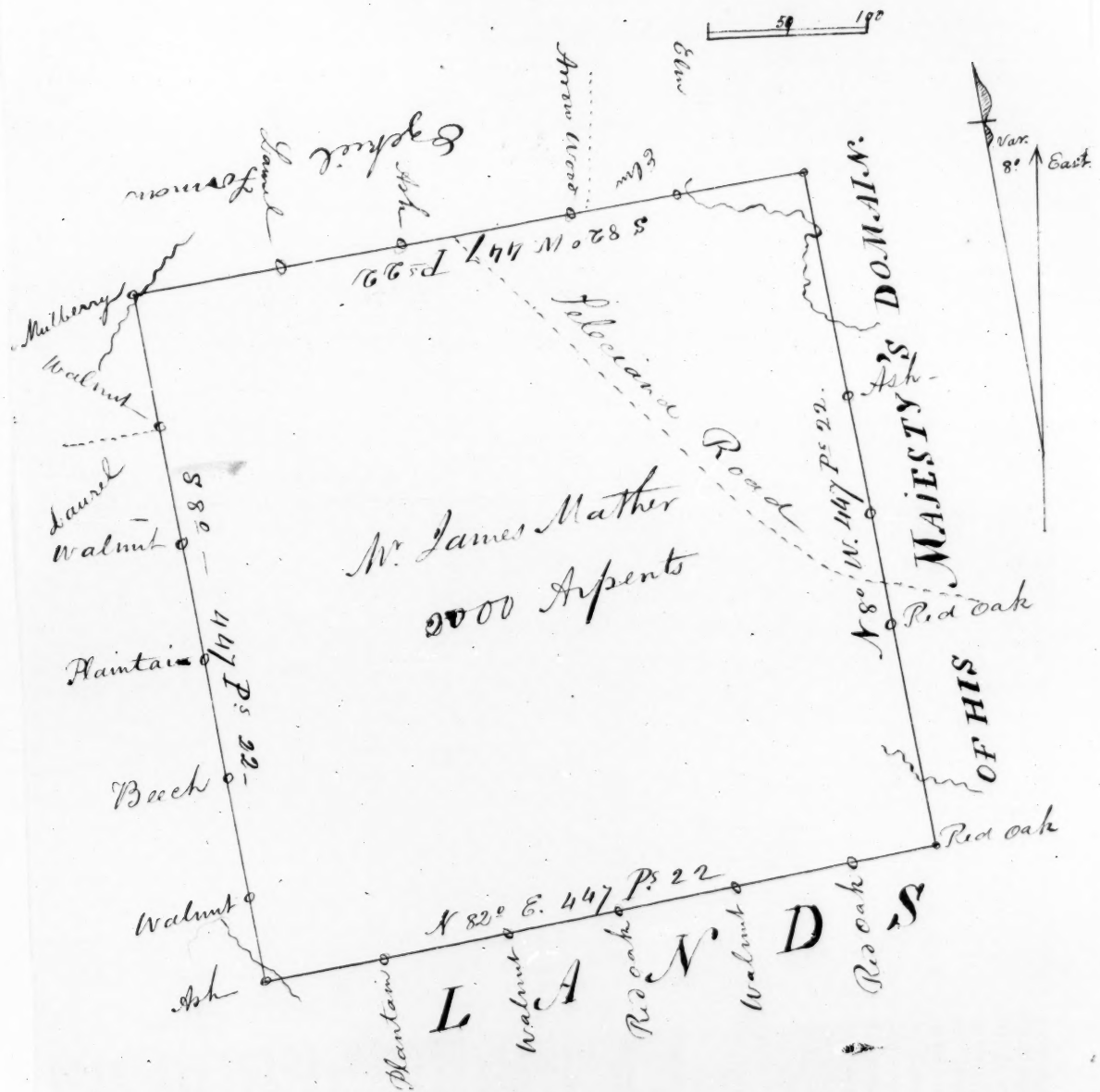
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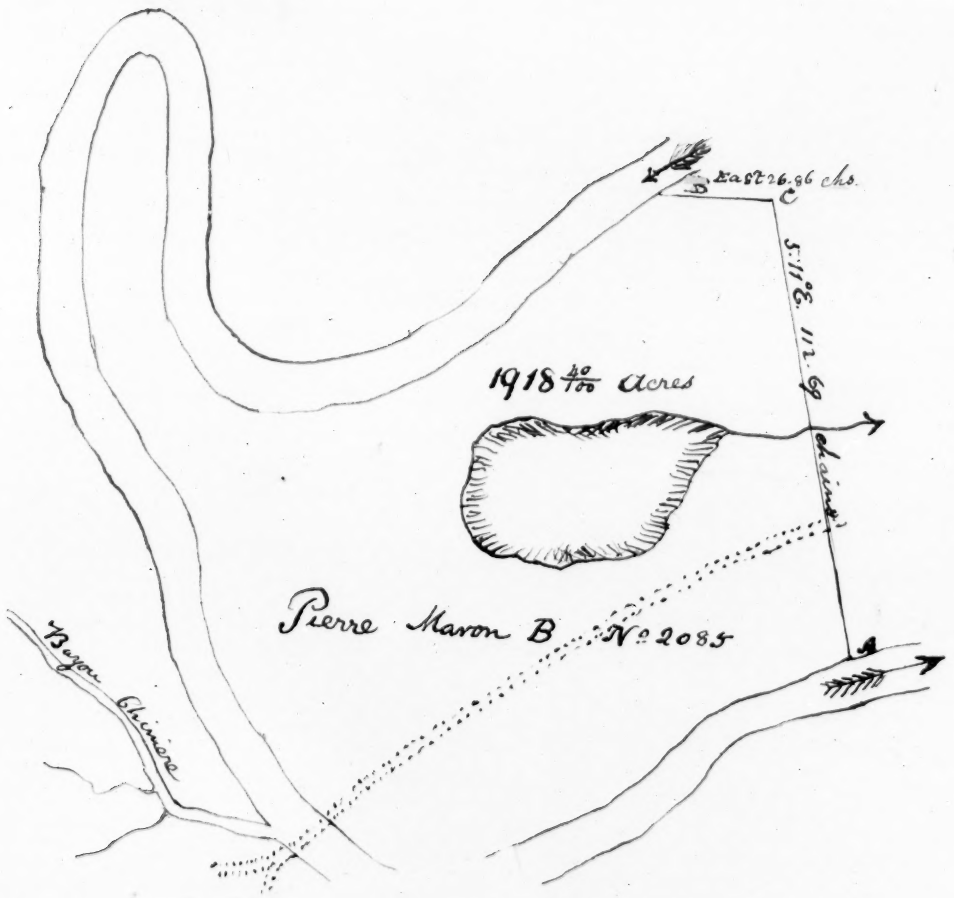
Harrods Creek

mouth of Cedar run

2 beeches corner to Fleming's preemption


George Clymer
3666⅔ acres
No. 2.
Harrods Creek
Brush Fork
No. 1.
S 45 E
Charles & John Blanton
7333⅓ acres
A
Cedar point fork


50
100
Var.
8° East
Elm
Sugar Tree
Elm
Sugar
Hickory
Hickory
Beech
S 82° W 447 Ps 22
Mulberry
Walnut
Laurel
Walnut
Plaintain
Beech
Walnut
Ash
S 8° W 447 Ps 22
Mr James Mather
2000 Aspents
Road
DOMINIONS
MAJESTYS
OF HIS
N 8° W 447 Ps 22
Ash
Red oak
Red oak
N 82° E 447 Ps 22
Plaintain
Walnut
Red oak
Walnut
Red oak
LANDS


East 26.86 chs.
S. 11° E. 11.2 chs.
1918 40/100 Acres
Pierre Maron B. No. 2085
Bayou Chicot

23

Columbia

Oneonta Lake

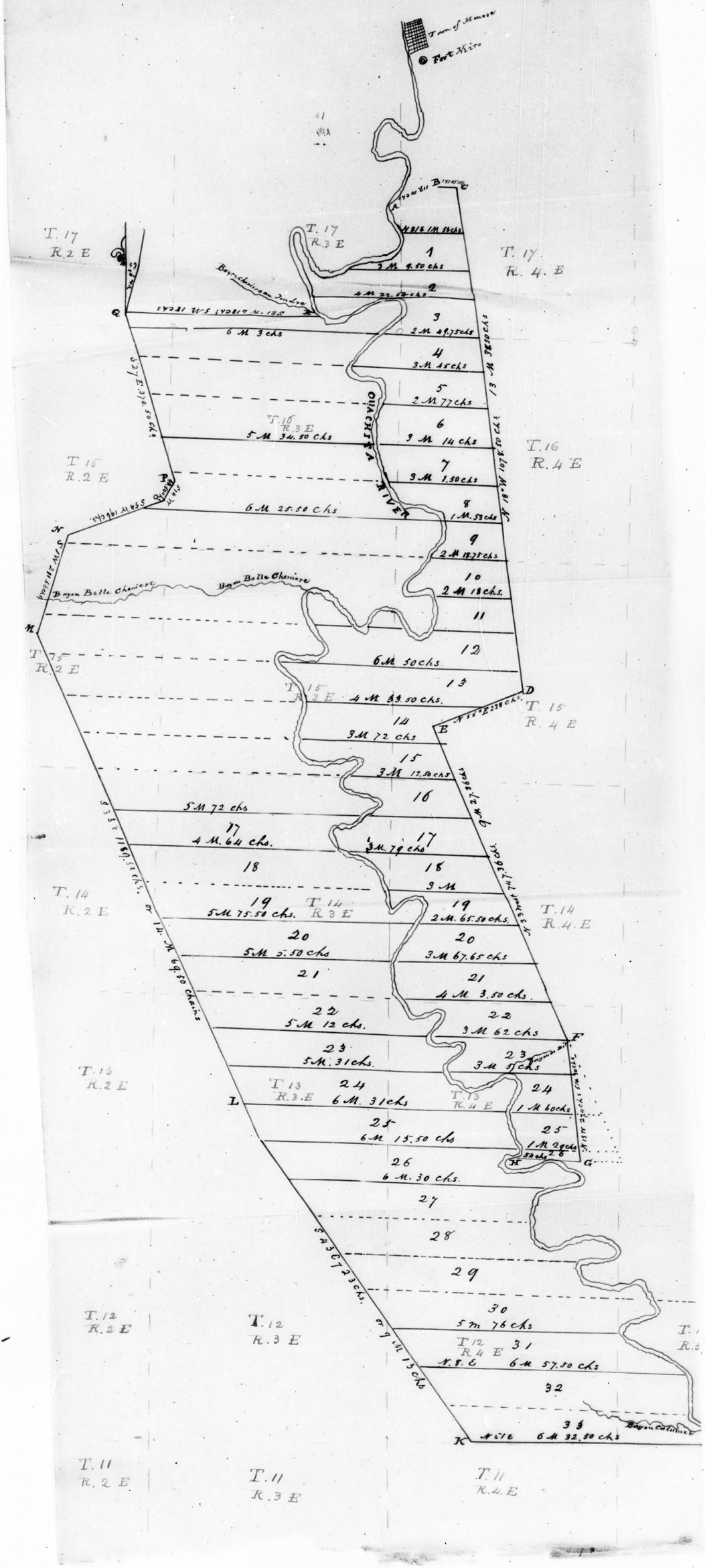
Round Lake

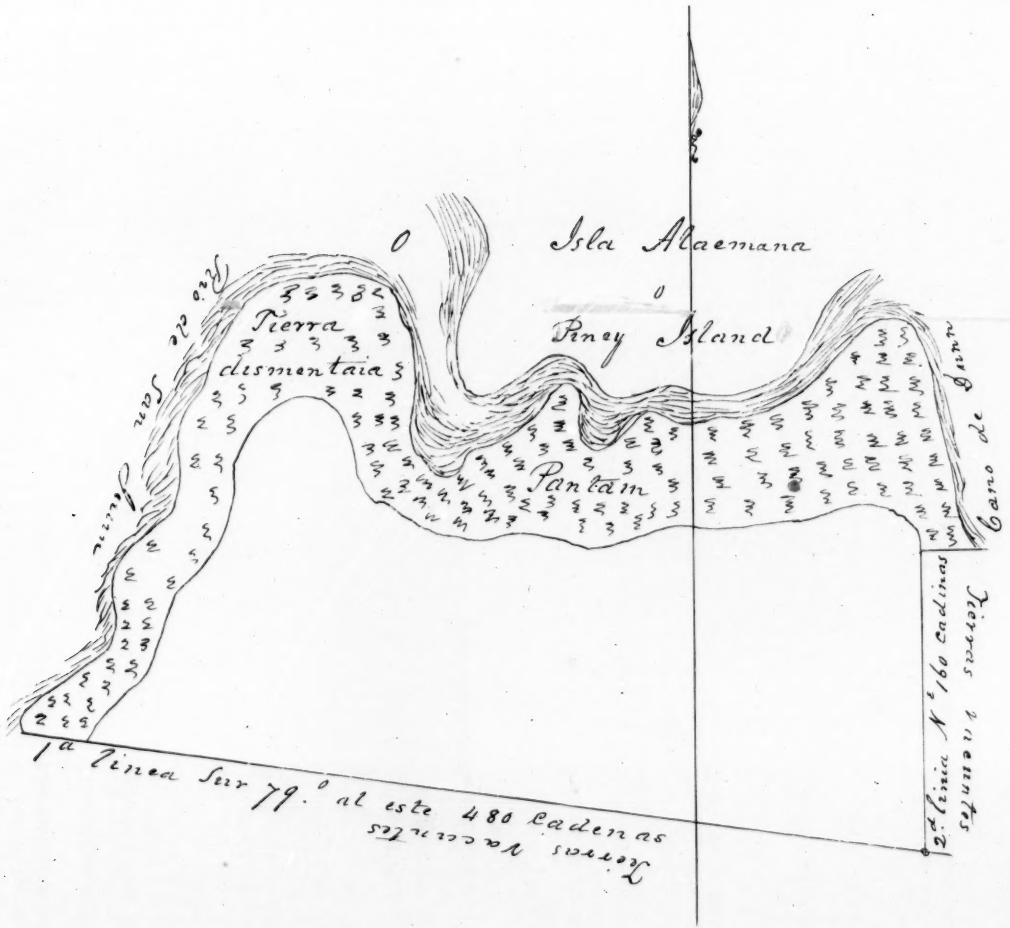
R. & R. Rep. 243
Joseph Etier

Louis Lemoin

Louis Lemoin

Louis Lemoin


Town of Monroe
Fort Miro
Ouachita River
Bayou Bonne Idee
Bayou Bartholomew
Bayou Belle Chenière
Bayou Belle Chenière
Bayou Catalpa
Bayou Catalpa
Bayou Bartholomew
Bayou Bartholomew
T. 17 R. 2 E
T. 17 R. 3 E
T. 17 R. 4 E
T. 16 R. 2 E
T. 16 R. 3 E
T. 16 R. 4 E
T. 15 R. 2 E
T. 15 R. 3 E
T. 15 R. 4 E
T. 14 R. 2 E
T. 14 R. 3 E
T. 14 R. 4 E
T. 13 R. 2 E
T. 13 R. 3 E
T. 13 R. 4 E
T. 12 R. 2 E
T. 12 R. 3 E
T. 12 R. 4 E
T. 11 R. 2 E
T. 11 R. 3 E
T. 11 R. 4 E
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Isla Alaemana
Piney Island
Tierra
dismentaia
Pantam
Cano de
Terrenos vacantes
1a Linea Sur 79.° al este 480 cadenas
2.a Linea N.e 180 cadenas